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FEDERAL MANAGEMENT REORGANIZATION AND COST CONTROL ACT OF 1986

JULY 31 (legislative day, JULY 28), 1986.—Ordered to be printed

Mr. ROTH, from the Committee on Governmental Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2230]

The Committee on Governmental Affairs, to which was referred the bill (S. 2230) to improve the management of the Government by reorganizing the Office of Management and Budget, strengthening financial management, improving the coordination of Federal information policy, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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I. PURPOSE AND SUMMARY

In order to strengthen the overall management of the Federal government, reform and improve the Government's financial systems, foster economy and efficiency, establish more effective systems and structures for Government programs, improve the executive leadership of Federal departments and agencies, and build the capacity of such departments and agencies to carry out their missions, S. 2230 establishes in the Office of Management and Budget (OMB) a Deputy Director for Management and Finance, a Deputy Director for Budget, and an Executive Deputy Director. The bill further establishes an Office of Financial Management in OMB as well as controller functions in the major Executive Branch agencies.

The bill details specific missions of OMB in the areas of financial management, general management improvement and evaluation, productivity improvement, human resources management, and organization and coordination, and requires the President to submit an annual management report to the Congress. Officials delegated management functions by the Director of OMB shall report to the Director through the Deputy Director for Management and Finance.

An Administrator for Financial Management and a Federal Financial Management Council are created to advise and assist the OMB Director in carrying out his financial management responsibilities. A President's Commission on Financial Management in the Federal Government is also created to evaluate and make recommendations on the most appropriate institutional arrangement in the Executive Office of the President for providing leadership for financial management.

In order to ensure that executive agencies have financial systems that conform to the principles, standards and requirements for accounting and internal control system required by the Accounting and Auditing Act of 1950, as codified in title 31, United States Code, title II of S. 2230 directs agencies to develop and implement such systems within three years of the provision's effective date, subject to OMB's review and supervision.

The agencies are further directed in title III to prepare annual financial statements to be subjected to biennial audits, and government corporations are to prepare annual financial statements subject to independent audit.

For the purpose of maximizing the efficiency of handling Federal cash transactions, tite IV of S. 2230 empowers the Secretary of the Treasury to promulgate regulations providing incentives and methods of payment to ensure timely disbursement of Federal funds and timely State-Federal transfers. To solve longstanding differences between the Federal and State governments regarding cash management practices involving the financing of federal assistance programs, title IV amends the Intergovernmental Cooperation Act (section 6503(a) of title 31). Consistent with the Memorandum of Understanding For Financing Federal Assistance Programs agreed to by the Joint Federal/State Cash Management Reform Task Force in June 1983, and a subsequent Memorandum of Understanding agreed to by the Task Force in November 1985, the

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amended section 6503(a) establishes (1) a set of governmentwide cash management policies and practices to govern the exchange of funds between the Federal and State governments and (2) intergovernmental cash management practices which assure that neither the Federal nor a State government benefit or suffer financially as a result of a transfer of cash under a Federal program. The bill also establishes a national lockbox system to improve the collection and deposit of Federal receipts.

To assure the proper management of credit transactions conducted by Federal agencies and to increase the effectiveness of Governmentwide efforts to collect debts owned the United States, title V of the bill requires each lending agency to prepare, and update annually, a comprehensive credit management and debt collection improvement plan for review by the Administrator for Financial Management; requires the Administrator to establish Federal credit management policies and promulgate implementing regulations so that the best practices of Government and the private sector are followed; requires a subsidy statement for each new direct or guaranteed loan program proposed by a Federal agency; disallows future Federal credit to any applicant who is in default on a Federal loan or loan guarantee program; requires that Federal loan and loan guarantee contracts contain default and acceleration clauses; requires applicant notification of Federal collection policies; requires improved agency loan record keeping; and provides for a study to determine if any Federal loan programs can be carried out by the private sector with government guarantees.

In addition, title V requires the establishment of debt collection targets in each Federal lending agency and the development, in consultation with the Administrator for Financial Management, of delinquency and default rates for each loan and loan guarantee program. The bill requires internal audits of all Federal agency credit management and debt collection systems and policies within two years of the effective date; and requires the use of credit bureaus, collection agencies, and administrative offsets, where appropriate, to collect delinquent debts.

In order to improve the coordination of Federal information policy, title VI of the bill amends chapter 35 of title 44 to authorize appropriations for OMB's Office of Information and Regulatory Affairs for fiscal years 1987 through 1990; provide for the appointment of the Administrator of the Office of Information and Regulatory Affairs by the President with the advice and consent of the Senate; consolidate the Federal telecommunications fund and the automatic data processing fund as the Information Technology Fund; and clarify existing law on Federal information policy.

II. BACKGROUND AND NEED FOR LEGISLATION

Congress anticipated that OMB's predecessor agency, the Bureau of the Budget (BoB), would play a strong role in overseeing and improving the management of government beginning with the Budget Bureau's 1921 statutory charter. During the early decades of its existence, BoB did make a serious effort to perform that role in a systematic way, particularly after BoB was transferred to the Executive Office of the President in 1939.

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Ironically, it was after the BoB was reconstituted as the Office of Management and Budget in 1970, ostensibly adding the "M" to OMB, that, according to a large number of observers, management functions there began to erode most seriously. At first, an ambitious agenda of management activities was established, including a leadership role in program evaluation and coordination; improvement of executive branch organization, information, and management systems; and development of executive talent. But by 1973, many management functions had been transferred to the General Services Administration and most of the remaining management staff had been merged into the budget divisions. Soon thereafter, "management by objectives," the primary management initiative of OMB's early years, was abandoned.

A 1977 reorganization plan re-established co-equal budget and management units in OMB, but primary emphasis was given to government reorganization and agency consolidation through the President's Reorganization Project. Congress eventually approved ten reorganization plans submitted during the Carter administration, but these brought about only limited changes, falling well below the administration's proclaimed goals.

The Reagan Administration's attention to management issues has largely been driven by the budget process and a will to reform spending priorities, improve administrative efficiency, and reduce costs. In 1982, the President appointed the President's Private Sector Survey on Cost Control—the Grace Commission—with a broad charter to find ways to cut costs and improve management. This Commission operated relatively independently from OMB, although the Office has since been assigned a follow-up role on the Commission's recommendations. Later that same year, the Administration launched Reform '88, the President's Management Improvement Program, as a high-visibility, broad-scale set of intitiatives spearheaded by OMB. Reform '88 has made notable and much-needed progress, particularly in reducing fraud and waste, and in improving administrative efficiency, and systems consolidation.

OMB recently instituted management reviews, tied to the budget process, and an automated progress reporting system that gave the Office a more systematic means for influencing agency behavior on management issues. Aggressive use of these tools has made possible specific OMB guidance and direction on a broad range of managment initiatives. Yet this particular form of OMB involvement—in the details of agency operations—comes at a time when senior Federal managers and organizations such as the National Academy of Public Administration are pointing to the mismatch between managers' authority and responsibility and to the lack of accountability and overregulation as impediments to government performance.

Looking at the record for the past 16 years, OMB's management efforts have clearly taken a back seat to the budget function. Management improvement activities have depended more upon the preferences of individual Presidents or OMB leadership than on any coherent, continuous concept of government management. Consequently, efforts to strengthen the management side of OMB have provided only limited or temporary results. In addition, the inadequacy of OMB's management staff resources is an impediment to

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implementation of any management program. The thrust of OMB's managerial improvement effort has consistently been made in terms of cost cutting and administrative efficiency to the near exclusion of capacity building and enhanced program effectiveness.

GAO studied centrally-directed, government-wide management improvement programs conducted in the 1970's, and found that few initiatives had lasting impact. Similarly, a panel of experts at the National Academy of Public Administration concluded in a 1983 report, "Revitalizing Federal Management," that the Government had experienced a decade of declining managerial effectiveness despite efforts to solve specific management problems. They reported that improvement efforts have been sporadic, poorly planned, and inadequately backed and staffed.

The mismatch between the scope of contemporary management problems in the Federal Government and the institutional resources or inclination in the Executive Office of the President (EOP) to contend with them is probably nowhere more apparent than in the area financial management.

In recent years, the concept of a financial management system has been broadened substantially to include, according to OMB's description, "the total of agency financial systems, both manual and automated, for planning, budget formulation and execution, program and administrative accounting, and audit, as well as other systems for recording and classifying financial data and reporting financial management information, including purchasing, property, inventory, etc." In a 1985 report, "Managing the Cost of Government," the Comptroller General took this definition one step farther, holding that financial management encompasses "all or part of the processes and functions of planning and programming, budgeting, budget execution and accounting, and audit and evaluation."

In keeping with the expanded understanding of financial management, OMB's role in this field has evolved from one that was primarily concerned with systems supporting the budget process to a wide-angle focus on agency financial systems and information availability to top executive branch managers.

Over the past two presidential administrations OMB initiatives in cash and credit management, debt collection, internal control reviews, and strengthened Inspector General functions have all yielded promising results. OMB's financial management unit has been moved from the budget to the management side, bringing it more in line with the broader financial management concept and with other government-wide management initiatives. In December 1984, OMB issued a new Circular A-127 establishing policies and procedures for agency financial management systems, which was followed three months later by an OMB manual on financial management and accounting objectives. Agencies were further directed to prepare five-year financial-system plans.

In the past several years, Congress has also devoted greater attention to financial management, enacting a series of statutes—all giving OMB a major role. These included the Federal Managers' Financial Integrity Act, the Debt Collection Act, the Prompt Payment Act, and the Single Audit Act.

But serious difficulties resulting from the historic decentralization and fragmented growth of financial management systems

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remain despite recent progress. Federal agencies reported more than 300 new "material" internal control weaknesses in their 1985 year-end statements filed under the Federal Managers' Financial Integrity Act. They have cited over 1,100 "material" weaknesses in total since 1983. In its fiscal year 1987 management report, OMB confirmed that a number of departments and agencies could not provide reasonable assurance that their internal control systems conformed to the requirements of the Financial Integrity Act.

Agencies also reported under the Act that more than 40 percent of their accounting systems did not conform to appropriate accounting principles and standards (or the agencies did not know if the systems conformed), including those in 81 of 146 such systems in the Department of Defense. Financial information provided to the Congress and the public concerning the condition and operations of the Federal Government is often incomplete, inconsistent, unreliable, and untimely. In addition, the systems used to manage and control Government operations and to report the financial condition of the Government are too frequently obsolete, inefficient, or both.

Cash management and debt collection problems continue. Of 18 agencies which account for over 95 percent of all Federal expenditures, 12 reported under the Financial Integrity Act "material" cash management weaknesses while 14 reported "material" debt collection problems. In May 1986, the Comptroller General reported (GAO/AFMD–86–39) that "agencies have been slow in implementing the debt collection tools provided by the Debt Collection Act", and as a result, "billions in receivables continue to go uncollected, and additional billions are written off annually."

Agency collection efforts are further hampered by accounting systems which often do not provide management with current and accurate information of the status of debts owed to the Government. At the end of fiscal year 1985, the Government reported $24 billion in nontax delinquent debts—a 55 percent increase in three years—and had $346 billion of receivables. Another $410 billion in loans had been guaranteed by the Government.

Major recent studies of federal financial management conducted by the Comptroller General, the Grace Commission, and Price Waterhouse have all described what they regard as serious weaknesses in federal budgeting and agency financial systems: inadequate internal control and accounting systems that expose Government programs to fraud, waste, and abuse, and insufficient leadership at the central agency level to bring about the fundamental financial system reforms needed for a trillion-dollar government operation. Studies by these organizations all conclude that fundamental reforms, including institutional changes, are required if the Government's financial management problems are to be remedied. The goal of establishing efficient, consistent, and comprehensive financial management systems in the Federal Government was established legislatively by the Accounting and Auditing Act of 1950. It is still unrealized after more than 35 years.

In the field of information resources management, the Brooks Act of 1965 assigned to the General Service Administration the responsibility for managing automatic data processing (ADP) acquisitions and promoting the sharing of ADP resources among Federal

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agencies. It also assigned OMB responsibility for providing "policy guidance to promote effective and economic application and utilization of ADP equipment and to evaluate ADP management performance. The Paperwork Reduction Act of 1980 (chapter 35 of title 44, United States Code) assigned OMB the responsibility for "developing and implementing policies, principles, standards, and guidelines for automatic data processing and telecommunications * * * and overseeing the establishment of standards." It also created within OMB an Office of Information and Regulatory Affairs (OIRA) to carry out this assignment.

There has been widespread dissatisfaction in Congress and elsewhere with OMB's performance in carrying out these statutory requirements. For example, the Grace Commission's task force on automated date processing/office automation found that the Federal Government was not effectively managing its information technology resources and, therefore, missing out on substantial potential cost savings. According to the task force, "The Government has failed to develop a coherent system for ADP planning and management." The task force said further that, "One of the major causes of the problem is the apparent reluctance of the * * * OMB to exercise managerial (as opposed to mere budgetary) control over information technology."

A February 1986 report titled, "Federal Government Information Technology: Management, Security, and Congressional Oversight," performed for the Committee by the Office of Technology Assessment, stated that the Government is not maximizing the return on its substantial investment in the technology, conservatively estimated at $60 billion over the past five years. OTA said that the annual five-year plans published by OMB have several significant deficiencies. "While the documents are gradually becoming more comprehensive," OTA observed, "they are not 'plans' and they do not analyze strategies for using information technology to further government missions, either on a governmentwide or individual agency basis. There is no real vision of the future and little discussion of alternative strategies for use and management of information technology."

The Federal Paperwork Act established central management controls and an accountability structure to eliminate unnecessary and wasteful demands for information by Federal agencies. Fundamental to passage of the Act was acceptance by Congress of the recommendation by the Commission on Federal Paperwork created in the 1970s that information should be treated not as a free good, but as a resource that should be valued and managed carefully.

The Act created a mechanism for systematic review of the need for all reporting and recordkeeping requirements sponsored by the Federal Government and affecting the public. Policy responsibility, not only for ADP and telecommunications, but also for Federal statistical activities, records management, privacy of records, information policy, paperwork and regulatory review were aggregated in one office—OIRA—in order to improve management of governmentwide information resources.

In an earlier Committee report on Amendments to the Paperwork Reduction Act (S. 2433), 98th Congress (S. Rept. 98-576), it was noted that the Paperwork Reduction Act required OIRA to set

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a goal of reducing Federal paperwork by 25 percent by October 1, 1983. In January 1984, the Administration announced that it had substantially exceeded this goal. The Committee report stated that, "While this is a substantial achievement, the real dimensions of the paperwork burden are only slowly becoming apparent." The review process mandated by the Paperwork Reduction Act had uncovered many additional existing information requests not included in the 1980 total on which the original 25-percent reduction goal had been based. In addition, new paperwork requirements had been established since that time. As a result, despite a cut of nearly one-third of the apparent 1980 base, OIRA calculated an inventory at the end of fiscal year 1983 which was one-third larger than the 1980 base. Further, the Committee believed that substantial reporting and recordkeeping requirements had not yet been captured in the inventory.

OMB recently advised the Committee staff that further burden reductions have been achieved since 1983 and that its inventory is now more complete. The net result is that the total calculated burden has remained about the same.

OIRA's task was further complicated in June 1982 when the Justice Department's Office of Legal Counsel issued an option limiting the applicability of the Paperwork Reduction Act to reporting and recordkeeping requirements specifically contained in rules in effect at the time of the Act's passage. The opinion construed the term "collection of information requirement" as used in section 3504(h) of the Act, to establish a class of information requests totally distinct from "information collection requests," a term defined by the Act and used in sections 3507, 3512, and elsewhere to establish paperwork clearance, public protection, and other requirements.

The Committee's 1984 report concluded that a consequence of the Justice Department's construction would be to gut the public protection clause (section 3512) as it applies to requirements contained in rules existing at the time of enactment of the Federal Paperwork Act.

In March 1983, OIRA issued a rule establishing procedures to implement the Act (5 CFR Part 1320) as it pertains to collection of information. Under broad authority granted to the OMB Director to carry out the Act's purposes, OIRA asserted its authority to review paperwork requirements contained in regulations. Control numbers were assigned for all information requirements contained in rules. However, the applicability of the public protection clause to this class of paperwork requirements was not resolved, and statutory clarification was—and is—needed.

The adequacy of staff resources at OIRA has also been a problem. During the course of oversight hearings, as well as hearings on S. 2433, 98th Congress, the General Accounting Office and other witnesses repeatedly expressed the view that the Administration had not devoted enough resources to OIRA for that office to implement fully the Paperwork Reduction Act within the timetable set forth in the Act. OIRA's budget has been far below the amounts initially authorized in the Act.

The Committee's 1984 report stated that insufficient funding led to inadequate attention by OIRA to several of the policy functions associated with information resources management. Initially, OIRA

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chose to dedicate its time and resources to certain policy functions, chiefly paperwork and regulatory review, to the detriment of the overall strategy of effectively integrating all information policy functions. The recent OTA report cited above appears to confirm this problem. OIRA lagged behind in developing and implementing policies, principles, standards, and guidelines for ADP and telecommunications functions and activities of the Federal Government, as required by section 3504(g) of the Paperwork Reduction Act. The Committee notes, however, that a circular addressing many of these issues was recently issued. Likewise, some additional attention has been given to statistical policy coordination and to the review of agency information management activities. Nevertheless, commitment of staff resources for information management activities has been very limited and OMB is far behind in meeting many of the targets established by the Act.

Similarly, other Federal agencies have been slow to implement Paperwork Act provisions applying to their operations. OTA observed in its February 1986 report cited above that, for example, "while agencies have designated an Information Resources Management (IRM) officer, actual implementation of IRM varies widely and has been only partially or minimally implemented in many agencies." OTA also said that the Paperwork Reduction Act provides "limited or no direct guidance in some key areas such as: the use of information technology to support agency decisionmaking * * * and public information technology and policy * * *." OTA concluded that there is a need to review progress since 1980 in implementing the Act and clarify the scope of authority and responsibilities intended for IRM officers. S. 2230 is, in part, the Committee's response to these concerns.

III. LEGISLATIVE HISTORY

Senator William V. Roth, Jr. introduced S. 2230 on March 26, 1986. Titles II through V of S. 2230 were designed to implement numerous recommendations of the Grace Commission, the General Accounting Office, and others to strengthen financial controls, improve financial information, and implement certain private sector practices in cash management, debt collection, and credit management. Title VI contained provisions to respond to Grace Commission and OTA recommendations for improved information resources management, automatic data processing, and telecommunications management.

The intractability and persistence of the problems underlying these reforms and the importance of their solution inevitably raised questions about implementation: What institutional structure would prove most effective? In view of the special importance of financial management reform, should these particular management functions be separated from others, as some suggested, or would they be better performed in conjunction with others, particularly with information management, the technology on which financial systems so heavily depend? In any case, could OMB most effectively perform any of these managerial staff functions, or would some other organizational arrangement be more appropriate?

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Various organizations had proposed institutional reforms either as options or as specific recommendations. In a 1983 staff study, "Selected Government-Wide Management Improvement Efforts—1970 to 1980" (GAO/GGD-83-69). GAO enumerated options suggested over the years by various experts. These ranged from creating a second deputy for management in OMB to establishing a Department of Management and/or Administration to assume the management functions of all the central overhead agencies. In the same year, the Grace Commission reported the need for more businesslike management of Government through strong control from the cooperate apex—the presidency.

Implementation of the Grace Commission's proposal for an enlarged budget and management office, which also subsumed major line responsibilities for Federal personnel management (Office of Personnel Management) and procurement (General Services Administration) in the Executive Office of the President, would have meant major increases in the size of the institutional presidency. Joseph R. Wright, Jr., OMB's Deputy Director, testifed before the Committee in 1985 that:

> There is a risk toward increasing the size of the Executive Office of the President to the point where you are getting into not only policy issues, not review issues, but fiscal operations and I think there is a danger there * * *.

In fact, the organization of the Office of Personnel Management as a management arm of the Presidency—one of the proposals receiving some notice recently—was tried during the Carter years but undone during Reagan's first term. Size was clearly understood as a problem.

Continuation of management in OMB, even with two deputies and a stronger statutory charter, appeared to risk perpetuation of budget dominance over management with the consequent emphasis on control and cost-cutting at the expense of managerial capacity building and the enhancement of program effectiveness. In this context, a persuasive case was made by a panel report of the National Academy of Public Administration on "Revitalizing Federal Management" that, "The most fundamental need is for a philosophy of Federal management which is aimed at enhancing the role and accountability of the manager. The attitude of those who design and administer the rules of budgeting, personnel, procurement, and administrative services must be reoriented from a 'control mentality' to one of 'how can I help get the mission of this agency accomplished.' "

The drafters of S. 2230 accepted both the conclusion and the major institutional recommendation of the NAPA panel, which were summarized by NAPA president Ray Kline in his May 1986 testimony before the Committee as follows: "True management improvement demands sustained attention and continuity of effort * * *. Management improvement must be effectively planned, directed, and implemented in consideration of the longer term and not in four or eight-year spurts. It is not enough to mount occasional narrow projects for improvement and ignore the wider range of government activity. An Office of Federal Management, with a strong Congressional charter behind it and dedicated, committed

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leadership will certainly provide program breadth and continuity of effort far superior to that which has existed up to now."

In order to secure the relationship between financial management, the focus of attention in four titles of the bill, and other management functions while upgrading them as well, the drafters settled on an Office of Federal Management, incorporating an Office of Financial Systems and the other management functions. As an integral part of this approach a requirement for an annual president's management report was introduced to provide Congress a report card on management initiatives. By involving both the president and the Congress more visibly in management issues and incorporating several provisions forging links between the agencies and the central maangement office, compensation was provided for the loss of direct linkage to the budget.

On May 13 and 14, 1986, the Committee on Governmental Affairs held two days of hearings on S. 2230, and on a companion measure in the area of credit management—S. 2142, the Loan Accounting and Deficit Reduction Act. On May 13, testimony was received from the following witnesses regarding S. 2230: Representatives John R. Kasich, Beau Bolter, and Joseph J. DioGuardi; Charles A. Bowsher, Comptroller General of the United States; George S. Goldberger, President-Designate of Citizens Against Government Waste; Joseph E. Conner, Chairman and Senior Partner of Price Waterhouse; Ray Kline, President, and Alan Dean, Chairman of the Panel on Federal Organization and Management, National Academy on Public Administration; Christopher T. Cross, President of the University Research Corporation, and Edward G. Sanders, President of the International Planning Analysis Center of Sears World Trade, representing the Center for Excellence in Government; J. Edward Sheridan, Professor of Finance at the Columbia Business School. representing the Private Sector Council; Roland W. Burris, Comptroller, of the State of Illinois and President of the National Association of State Auditors, Comptrollers and Treasurers; Lester E. Hammer, Vice President and Controller of Abbott Laboratories, representing the Financial Executives Institute; Edward J. Mazur, Comptroller of Virginia and Co-Chairman of the State/Federal Cash Management Reform Task Force, representing the National Association of the State Auditors, Comptrollers and Treasurers; Murray Comarow, Distinguished Adjunct Professor at American University; and Charles F. Bingman, Executive in Residence at George Washington University School of Government and Business Administration.

Testifying on May 14 on S. 2230 was James C. Miller III, Director of the Office of Management and Budget. Written statements on S. 2230 were received for the record from Dwight Ink, Panel Chairman, National Academy of Public Administration; and Harold I. Steinberg, Partner of Peat, Marwick, Mitchell & Co.

Those testifying on S. 2230 consistently pointed to the need for institutional reform so as to achieve needed management improvements, with particular emphasis on the Government's problems with financial management. Representative DioGuardi and a number of private sector witnesses called for a chief financial officer, outside of OMB, and with powers and authorities similar to those provided for in S. 2230. The Comptroller General, in support-

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ing the objectives of S. 2230, lamented the poor condition of the Government's financial management systems and the poor state of Federal management in general. The Comptroller General stated his belief that efforts to improve many of the management areas and financial management "will never get done at OMB". Representative Kasich spoke of the growing seriousness of the Government's debt collection problems despite OMB efforts to implement needed reforms.

Witnesses who were in OMB at its inception or who were involved in its initial establishment spoke of failed expectations and the need for structural change which would separate management from budget. The National Academy of Public Administration witnesses concluded that "the present central management agency institutional base to sustain a continuing high level of government management is too weak and must be strengthened, and that the key to this lies in the current role of OMB." The Academy witnesses strongly advocated the creation of an Office of Federal Management, independent of OMB. Echoing this theme, Murray Comarow, who served as the Executive Director of the President's Council on Executive Organization which recommended the establishment of OMB, stated that "the management function, despite administration denials, has never become a significant force in OMB". He further stated that if he had the gift of foresight, he would have recommended—and he expected the Council would have agreed—a separate office of Federal Management, similar to that contemplated in title I.

Across the board, there was a consensus among the witnesses that good management was being driven out of OMB because of a preoccupation with the budget. While the witnesses were unanimous in their denunciation of the present situation and in their view that serious financial and other management problems plague the Government, their solutions varied. Numerous models for reorganizing the management side of the Government's house were offered for the Committee's consideration.

The OMB Director James Miller took a different view. He objected to the establishment of the Office of Federal Management. He stated that both as a matter of effective management and in deference to Constitutional prerogatives, the President should have the broadest possible discretion in organizing his Executive Office, and that increased emphasis on management can be and is being achieved in OMB. Further, he believed that separating management from budget would set back OMB's management initiatives by undoing progress already made in integrating and coordinating the efforts of OMB's budget and management staffs. The Director asked the Committee to delete title I from S. 2230, while indicating that specific mandates for management would probably be helpful. He recommended that OMB staff work with the Committee in developing mutually acceptable legislation with respect to titles II-VI. For title VI, the Director recommended a bill exactly like S. 2433 which was unanimously reported by the Committee during the 98th Congress.

As noted above, title VI on Federal information policy was drafted to respond to Grace Commission recommendations for improved ADP and telecommunications management. The Committee had re-

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ported S. 2433, the Paperwork Reduction Act Amendments of 1984, in the 98th Congress, but the bill was never considered by the Senate. This bill would have strengthened the coordination of Federal information policy in a number of ways and reauthorized OMB's Office of Information and Regulatory Affairs.

The Governmental Affairs Subcommittee on Information Management and Regulatory Affairs had held a day of hearings on S. 2433 on April 4, 1984. Earlier, the Subcommittee had held oversight hearings on the implementation of the Paperwork Reduction Act on April 14, 1982, and on May 6, 1983. At the April 4, 1984 hearing, the Subcommittee heard from numerous witnesses representing the Administration, GAO, and the private and non-profit sectors expert in paperwork and information management (see S. Rept. 98–576 for details). The Committee reported the bill by a unanimous vote of 16 to 0 on July 24, 1984.

Many of the provisions in title VI of S. 2230 were taken from that earlier bill, but modified and added to, based on the Grace Commission's work and recent GAO and OTA studies. At the May 14, 1986 hearing on S. 2230, OMB Director Miller expressed the view that much of title VI required further work and that some of the proposed changes were unnecessary. But he also said, "I want to stress in the strongest possible terms my belief that legislation to authorize OIRA's appropriations is vital and must move very quickly." He recommended a stand-alone bill modeled on S. 2433, 98th Congress.

IV. COMMITTEE ACTION

In preparation for mark-up of S. 2230, which took place June 25, 1986, all six titles underwent substantial revision to incorporate suggested improvements offered by members of the Committee and to resolve technical problems that were pointed out by the General Accounting Office, the Office of Management and Budget, the National Academy of Public Administration, and others. As a result, Senator Roth introduced two amendments that would together replace all six titles.

The first of the mark-up amendments was directed at titles II through VI. In addition to making technical improvements, this amendment made several changes that were more substantive in nature. In title II, the authority of the Administrator for Financial Management to supervise and direct the installation and management of substandard agency accounting and internal control was strengthened, permitting that official to take action and expend agency funds necessary to bring such systems into compliance with the requirement of this title. In title IV, section 404, relating to remittance to the Federal Government of Social Security payments withheld by state and municipal government employers, was dropped on the understanding that the General Accounting Office would be requested to conduct a study of the administrative and financial impacts of putting the remittances of such payments on the same basis as those made by the private sector. The electronic funds transfer provisions of section 405 of title IV were also deleted by the amendment to permit further study of similar provisions in S. 2009, the "Electronic Funds Transfer Federal Salary Act," under

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review by the Subcommittee on Energy, Nuclear Proliferation, and Government Processes.

In title V of the first Roth amendment, a new Section 3802 was added to title 31, United States Code, requiring agency heads to prepare and update annually comprehensive credit management and debt collection improvement plans. New sections were also added to require the Administrator for Financial Management to establish Federal credit management policies and to promulgate implementing regulations (Section 3811); to provide each Federal loan applicant with advance notice of debt collection policies (Section 3816); and to require agency maintenance of appropriate and necessary loan documentation (Section 3817).

Because of the close relationship between information policy and the other management areas addressed in S. 2230, the Committee chose not to remove title VI from the bill. However, the substitute amendment to titles II–VI offered by Senator Roth included a revised title VI which was based much more closely on S. 2433 than the bill as introduced. The additions to S. 2433 included in the substitute for title VI were worked out with OIRA and represented largely technical changes designed to further clarify the scope and nature of the information resources management concept.

The other modification to S. 2433 in the substitute for title VI of S. 2230 involved the removal of all provisions dealing with OIRA's duty to disclose, upon request, certain information about its review of proposed rules. OIRA has been directed by the President, under executive orders 12291 and 12498, to review proposed and final rules and proposed regulatory agendas issued by Executive agencies.

Language in S. 2433 required OIRA to disclose certain documents involved in carrying out its regulatory review functions. However, on June 13, 1986, pursuant to an agreement with Senators Levin and Durenburger, OIRA Director Wendy Gramm issued a memorandum to all executive agencies describing new disclosure procedures, administratively imposed, for OIRA's involvement in the rulemaking process under the Executive Orders, which were even more extensive than those contained in S. 2433. Under the agreement, the Administrator of OIRA issued an internal memorandum which required the following:

(1) OIR will disclose copies of *all* draft, proposed, and final rules sent by anyone in the rulemaking Federal agency to OMB for review.

(2) OIRA will disclose copies of all written materials exchanges between OMB and the head of the rulemaking agency.

(3) OIRA will disclose any draft regulatory program sent to OMB for review under Executive Order 12498.

(4) OIRA will make available to the public and the relevant rulemaking agency all written material received from persons outside the Federal Government concerning the agency's rules, a list of all meetings with persons outside the Federal Government pertaining to the rules of the agency. Moreover, the relevant rulemaking agency employees will be invited to attend all scheduled meetings held between OMB and persons outside the Federal Government. These procedures will apply to any agency requesting them.

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(5) OIRA will continue to publish an annual accounting of the rules it reviews under Executive Order 12291, including a list of the rules sent to OMB for review which were returned to the rule-making agency and which were never published. It will also, on a monthly basis, identify those draft proposed and final rules for which OMB has completed its review during the preceding months and will state the length of OMB's review for each rule.

As a result of the issuance of this memorandum, the Roth substitute for titles II–VI of S. 2230 approved by the Committee did not include the provisions involving public disclosure contained in S. 2433.

In acting on the provisions of title VI, the Committee wants to make clear that nothing in S. 2230, as reported, or in this report, represents a Committee position on the appropriateness or legality of the review process established by executive orders 12291 and 12498, or any regulatory reviews conducted thereunder.

The first amendment by Senator Roth, to replace titles II through VI of the original bill, was unanimously adopted by voice vote.

The second amendment was offered by Senator Roth as a replacement for titles I of the bill, reflecting numerous preliminary discussions and meetings with the Office of Management and Budget and the General Accounting Office. The proposed Office of Federal Management advanced by the initial bill was withdrawn. In its place the amendment established, within OMB, a Deputy Director for Management and Finance, a Deputy Director for Budget and, in an amendment to the amendment, also offered by Senator Roth, an Executive Deputy Director of OMB. The amendment also established a new Office of Financial Management and reorganized other management functions in OMB, including the Office of Information and Regulatory Affairs and the Office of Federal Procurement Policy to report to the Director through the Deputy Director for Management and Finance.

This amendment also included a provision requiring estimates of the costs which would be incurred by state and local governments for each significant regulation proposed by an executive agency. In 1981, Congress passed the State and Local Cost Estimate Act which requires the Congressional Budget Office to estimate the costs that state and local governments would incur by complying with proposed federal legislation. The Congressional Budget Office is required to prepare cost estimates for every significant bill or resolution reported by committees in the House or Senate. These cost estimates provide Congress with important information about the anticipated costs of federal regulatory proposals on subnational governments.

In its oversight of the State and Local Cost Estimate Act, the Committee has determined that a principal reason that the Congressional Budget Office has been unable to prepare accurate cost estimates is that many statutes are not sufficiently detailed to provide analysts adequate guidance for making cost estimates. The Committee further determined that much of the information needed for accurate estimates is available from rulemaking agencies. Thus, in order to provide state and local governments accurate information about the costs of proposed federal regulatory actions

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so that they may participate fully in the public notice and comment process, the amendment included this provision requiring OMB to prepare estimates for significant regulatory proposals, to publish these in the Federal Register, and to report to the Congress on methodologies developed by OMB for estimating such costs within one year.

Prior to adoption of the second Roth amendment, Senator Durenberger offered an amendment in the nature of a substitute that would also establish two distinct deputy directors in OMB, one for management and one for budget; however, this amendment would also establish, in the Executive Office of the President, a Chief Financial Officer, outside OMB. After considerable discussion of the appropriate institutional location for anofficial having primary overhead responsibility for Federal financial management, and in particular the ability of such an official to implement the reforms demanded in S. 2230, the Durenberger substitute was withdrawn in favor of Senator Eagleton's amendment discussed below.

Senator Eagleton introduced two amendments to the second Roth amendment, the first to establish a presidential commission to study the appropriate location of financial management leadership in the Federal Government, and the second to mandate agency compliance with the principles and standards for accounting and internal control systems established under the Financial Integrity Act in three years instead of five. Both were accepted.

The Committee also adopted an amendment offered by Senator Rudman to the Roth substitute for title I deleting a provision limiting the President's prerogative to remove the Administrator for Financial Management. The Administrator was placed in the same position as other presidentially-appointed OMB officials who serve at the pleasure of the President.

While no specific legislative action was taken, the Committee wishes to comment on questions raised about OMB's use of its authorities under the Paperwork Act with respect to the enforcement of Federal civil rights laws.

OMB, in a number of instances, has disapproved agency information collection efforts proposed by agencies to monitor compliance with civil rights statutes and to further affirmatively the purposes of the Civil Rights Acts of 1964 and 1968, particularly titles VI, VII, and VIII (equal employment opportunity and fair housing enforcement in the private and public sectors).

Section 3518(e) of the 1980 Paperwork Act states:

> (e) Nothing in this chapter shall be interpreted as increasing or decreasing the authority of the President, the Office of Management and Budget or the Director thereof, under the laws of the United States, with respect to the substantive policies and programs of departments, agencies, and offices, including the substantive authority of any Federal agency to enforce the civil rights laws.

The purpose of the language to specifically include "civil rights laws" in this section was to assure, in the words of its sponsor, the then Chairman of the Senate Judiciary Committee, "that nothing in the Act will affect the substantive authority and responsibility

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of the Justice Department and of the Equal Employment Opportunity Commission or *any other* Federal agency under law or executive order to enforce the civil rights laws of the United States".

Agencies responsible for the enforcement of certain civil rights laws have disagreed with OMB disapproval of data collection requests. See, for example, GAO's report, "Fair Housing: OMB Review of HUD Requests to Collect Information from the Public" (GAO/HRD–86–33FS).

Long-standing information forms have been curtailed. Others have been disapproved by OMB. The Department of Housing and Urban Development (HUD), for example, has asserted that the effect of disapprovals by OMB has been to diminish its effectiveness in monitoring non-discrimination in the marketing and sales of homes assisted by Federal Housing Administration and Veterans Administration mortgage insurance. HUD further asserts that OMB actions may have impeded HUD's ability to determine the degree of racial segregation in public housing by building and unit size and, hence, to take actions, to reduce segregation. Concern was raised that OMB's actions made HUD's responsibility to comply with Federal court orders to desegregate its public housing stock more difficult. (see *Young* v. *Pierce,* No. P–80–8–CA, (E.D. Texas, July 31, 1985)).

The late Senator Jacob highlighted this committee's special responsibility to provide oversight of the relationship of the Paperwork Act to civil rights acts during Senate floor consideration. Senator Javits words deserve repeating. He expressed concern regarding the possible misuse of the Act. He stated:

> * * * Many of these programs simply cannot be enforced without the collection of data. Even if the information requested may seem burdensome to some, its collection is especially important in the area of civil rights. I have no objection to OMB reviewing information requests from civil rights or any other agencies to assure that the information is collected in the least burdensome manner consistent with the statutory purpose, and is not duplicative. But I will not idly stand by if it appears that any substantive civil rights program is being sacrificed. I do not believe the bill permits this, and that is why I can support it. But I will be watching its implementation very carefully.

While Senator Javits can no longer keep his promise, the concern he expressed has not abated. The Committee reaffirms its intent that the Paperwork Reduction Act is not to be used to thwart or interfere with an agency's responsibility to collect information necessary to carry out its civil rights enforcement responsibilities under law.

V. COMMITTEE VOTE

On June 25, 1986, the Committee on Governmental Affairs agreed to report favorably S. 2230, as amended, to the Senate, by unanimous vote of 7 to 0.

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YEAS—7 NAYS—0

Roth
Mathias
Durenberger
Rudman
Cochran
Eagleton
Levin

Senators Cohen, Glenn and Gore, not present when the vote occurred, also expressed their approval of the bill.

VI. MAJOR PROVISIONS OF S. 2230

TITLE I—IMPROVING FEDERAL MANAGEMENT

An Executive Deputy Director, a Deputy Director for Management and Finance, and a Deputy Director for Budget are established in the Office of Management and Budget (OMB).

Numerous management functions are assigned to the OMB Director which are to be carried out through the Deputy Director for Management and Finance, including:

general management improvement and evaluation;
human resources management;
productivity improvement;
organization and coordination; and
review of the organization and management provisions in proposed legislation.

An Office of Financial Management is established within OMB, headed by an Administrator for Financial Management, who is the principal advisor to the Director and Deputy Director for Management and Finance regarding Federal financial management policy.

Financial management functions, including the provision of central policy direction and leadership in financial systems, are assigned to the OMB Director to be carried out through the Deputy Director for Management and Finance and the Administrator for Financial Management.

The Director is required to prepare a statement of objectives and a 5-year plan for the financial management activities of the Government.

OMB officials responsible for management functions are to report to the Director through the Deputy Director for Management and Finance.

Controller functions are established within executive departments and agencies with responsibilities similar to the OMB Director and the Administrator for Financial Management.

A Federal Financial Management Council is established consisting of the Administrator for Financial Management and the agency officials assigned the controller functions to advise and assist the Director in carrying out his/her financial management responsibilities.

A President's Commission on Financial Management Leadership in the Federal Government is established to evaluate and make recommendations on the most appropriate institutional arrangement in the Executive Office of the President for providing leadership in developing and implementing modern, efficient and effec-

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tive financial management systems and providing appropriate reporting of the Federal Government's financial position and the results of its operations.

The President is to submit an annual management report for the executive branch summarizing management problems and issues, and the major management improvement initiatives undertaken and planned along with an explanation of the initiatives, progress and problems in implementation, and significant impacts on agency program operations. Within 90 days after the President has submitted the report, the Comptroller General is to prepare and transmit an analysis of the report to the Congress.

The Administrator of the Office of Information and Regulatory Affairs is required to prepare for each significant proposed regulation a statement estimating the costs which would be incurred by State and local governments in complying with such regulation.

Title II—Accounting and Internal Control Systems

S. 2230 reaffirms longstanding Congressional intent that agency financial systems conform to the accounting principles, standards and related requirements and with the internal control standards as mandated over 35 years ago by the Accounting and Auditing Act of 1950, and as amended by the Federal Managers' Financial Integrity Act of 1982 (sections 3511 and 3512 of title 31).

The head of each executive agency is required to include in the agency's annual appropriation request to OMB a statement as to whether and to what extent the information in the request was generated or supported by accounting systems that conform to the accounting principles, standards and related requirements of section 3511 of title 31 and the requirements of the Administrator for Financial Management.

To the extent that an agency's accounting system does not conform, the statement is to include (1) an analysis and explanation of the system's problems, (2) information on the steps taken to assure that Congress can rely on the accuracy of the information in the budget coming from the system, and (3) the date by which it is expected the system will be in conformance. This information is to be forwarded to the Congress in the agency's justification of estimates.

The Adminstrator for Financial Management is required to provide consultive assistance, direction, and supervision to agencies in development and enhancement of their accounting and internal control systems.

To provide the necessary tools and authority to improve the agency systems, the Administrator has the authority, after consultation with the Comptroller General, to direct and supervise the financial management operations of any agency whose systems are not in compliance within three years and to use any funds available to the agency for administrative expenses to take necessary action to bring the system into compliance. In carrying out this authority, the Administrator may elicit the assistance of an agency whose systems are in compliance.

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TITLE III—AGENCY FINANCIAL STATEMENTS

Agencies are required to prepare financial statements, beginning with the first full fiscal year following enactment of S. 2230, which present an agency's financial position and results of operations.

On a biennial cycle, beginning for fiscal 1991, agencies are required to have these statements audited by the agency's Inspector General, or an independent auditor, in accordance with generally accepted Government auditing standards.

The Comptroller General may perform the audit, at his discretion or upon request of a committee of Congress. The Comptroller General may also review any audit conducted under this section to ensure compliance with accounting and auditing standards. He is to report the results of any such review to the Congress together with appropriate recommendations.

The Administrator for Financial Management is to submit to Congress a plan for ensuring that the required audits are completed in accordance with the biennial schedule. The Administrator is allowed to extend or compress the two-year audit schedule, with the mutual agreement of the Comptroller General, but an audit must be performed at least once every three years.

All Government corporations are to be audited annually by an independent external auditor, selected by the corporation in consultation with the Comptroller General. Presently, the law calls for an audit by the Comptroller General at least once every three years.

The Comptroller General is authorized to review the work of the corporation's independent external auditor and to report to the Congress on the results of these reviews.

At his discretion, or upon request of a committee of Congress, the Comptroller General is to perform the corporation audit in lieu of the independent external auditor.

The Government corporation is to submit to Congress a report of its financial position and results of operations, including the audit conducted under this title, not later than 180 days after the end of the corporationi's fiscal year.

TITLE IV—CASH MANAGEMENT

Additional procedures and incentives for cash management are provided in order to increase the efficiency of the efforts to manage cash throughout the Government.

Treasury is allowed to accomplish the same objectives for disbursements as are now permitted for collections under the Deficit Reduction Act of 1984.

Agency heads are required to provide for the timely disbursement of Federal funds in accordance with Treasury regulations.

Treasury is permitted to penalize agencies for not adhering to Treasury disbursement regulations by collecting an amount determined to be the cost to the Government of the agency's noncompliance. Such amounts collected are to be used for improving cash management.

Consistent with the Memorandum of Understanding For Financing Federal Assistance Programs agreed to by the Joint Federal/State Cash Management Reform Task Force in June 1983 and a

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subsequent Memorandum of Understanding in November 1985, S. 2230 establishes (1) a set of governmentwide cash management policies and practices that can govern exchanges of funds between the Federal and State governments, and (2) intergovernmental cash management practices which assure that neither the Federal nor State governments benefit or suffer financially as a result of the transfer of cash in support of Federal assistance programs.

Agency heads are required to minimize the time elapsing between the transfer of funds by Treasury and the issuance of payments by a State, and conversely, States are to minimize this timeframe.

The Secretary of the Treasury is to issue regulations that require a State to pay interest on Federal funds that are received in advance of need. Conversely, if a State disburses its own funds for program purposes in accordance with Federal law, regulation, or Federal-State agreement, the State is to be paid interest by the Federal Government.

The Secretary is to prescribe the methods of paying interest between the States and the Federal Government while assuring comparable treatment for both parties.

The Federal Government is required to execute grant awards, consistent with program purposes and regulations, on a timely basis to assure the availability of Federal funds when needed by a State to make payments under a Federal program. Interest earned by a State on refunds of grant funds is to be returned to the Federal Government.

Treasury is required to consider, in establishing the amount of interest to be paid by a State, costs incurred by a State to determine the interest amounts due.

These requirements apply to all Federal programs and supercede any Federal law or regulation in effect at the time of enactment of S. 2230; but States and the Federal Government will have two years before the interest payment procedures go into effect to give both parties the necessary time to make improvements in cash management practices and procedures and to put into effect the systems needed to implement the interest payment provisions of this section.

The Secretary of the Treasury is required to study and make recommendations for the establishment of lockbox systems to receive payments and to speed up the deposit of collections to the Government's account.

The Secretary is to consider, among other things, the feasibility and needs of each agency and the benefits and costs of establishing such systems.

A report to the Congress on the study is due within 180 days of enactment of S. 2230. Within 90 days following the report, the Secretary is to prescribe guidelines for establishing lockbox systems. The agencies then have 90 days to submit plans to the Secretary for implementing the guidelines and establishing lockbox systems or specifying reasons why a lockbox system is not feasible or cost effective.

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TITLE V—CREDIT MANAGEMENT

Strengthened management of Federal credit programs and increased efficiency of efforts to collect the billions of dollars of debts owed the Government are the goals of this title.

Agency heads are required to prepare, and update annually, comprehensive credit management and debt collection improvement plans.

The Administrator for Financial Management is to establish Federal credit management policies and promulgate implementing regulations so that the best practices of Government and the private sector are followed. The Secretary of the Treasury is to prescribe minimum requirements for contracts for all loans or loan guarantees.

Agency legislative proposals to establish new credit programs or to amend existing ones are to include an explicit statement on any subsidies to be provided under the programs.

It is the policy of the Congress that interest rates in all new direct loan programs are to be related to market rates for comparable private sector loan programs, and are to be adjusted annually to reflect changes in the rates.

Federal loan or loan guarantee funds are not to be made available to any applicant who defaults on a Federal loan or loan guarantee made after the effective date of S. 2230 unless the new loan or guarantee is necessary to protect the Government's interests, the default was discharged under Federal bankruptcy laws, or the default has been made current.

Loan and loan guarantee contracts are to contain default and acceleration clauses unless the agency head determines that these requirements are not appropriate or in the best interests of the Government and reports the reasons for such a determination to the Congress.

Each Federal loan applicant is to be provided a notice of collection policies in advance of receiving a loan which addresses the applicant's repayment responsibilities under the terms of the loan agreement and the Federal Government's debt collection policies and practices.

For each Federal loan, the agency is to maintain appropriate and necessary documents and information to enable the agency to properly administer and collect the loan.

The President is to conduct a study to determine if any Federal direct loan programs could be carried out at least as cost effectively, in whole or in part, by private lending institutions without Government guarantees and in accordance with the objectives of the statutes authorizing the loan programs.

Each agency is required, as part of its budget request, to develop and specifically identify collection targets for all agency credit programs, and is to develop delinquency and default standards for each loan and loan guarantee program.

Credit management and debt collection systems and operating policies of each Federal agency having loan programs are to be audited by the Inspector General (or an equivalent where there is not a statutory Inspector General).

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Agencies are required to report delinquent debts to credit reporting agencies, and the use of private collection contractors is required unless the agency head determines this requirement is not appropriate or in the Government's best interests.

The due process requirements for involuntary salary adjustments are not to apply to interagency deductions for routine administrative overpayments which are the result of clerical or administrative error or delays in the processing of pay documents.

The Internal Revenue Service is authorized to provide taxpayer information to agencies pursuing debt collection activities under authorities other than the Federal Claims Collection Act.

Agencies are required to collect debts owed to them by administrative offset, whenever feasible and in the Government's interests, and the same 10 year statute of limitation for administrative offset is to apply to salary offsets for Federal employees.

The President is to include, as part of the buget submission for each agency operating credit programs, a separate statement detailing the agency's compliance with and activities under the Federal Claims Collection Act and S. 2230, and reporting on debt collection activities is expanded.

Title VI—Federal Information Policy

Appropriations are authorized for OMB's Office of Information and Regulatory Affairs (OIRA) for four years, starting at $9 million for fiscal year 1987 and rising to $10.5 million for fiscal year 1990. Additional hiring authority is provided to OIRA.

The Administrator of OIRA is to be appointed hereafter by the President, subject to confirmation by the Senate. To improve coordination with other OMB management functions, the OIRA Administrator is to report to the OMB Director through the newly-established Deputy Director for Management and Finance.

A definition of "information resources management" that encompasses all stages of information management and all types of information technology is incoporated in law.

The OIRA Administrator's scope of authority is expanded to include security of records, decision support activities, and agency sharing and dissemination of information.

Agency information resources management responsibilities are clarified and strengthened so as to require implemention information resources management principles, policies, and standards; preparation and annual update of a 5-year agency information resources management plan; and periodic evaluation and improvement of the accuracy, completeness and reliability of data and records.

The existing Federal telecommunications fund and automatic data processing fund are combined into a new Information Technology Fund.

The congressional intent of the Federal Information Locator System is clarified to also include assistance to Federal agencies and the public in locating existing government information.

OMB's statistical policy and coordination functions, which are to be carried out through OIRA, are strengthened.

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The Federal Paperwork Act is to apply to all reporting and recordkeeping requirements, whether contained in new or existing rules. CIRA is to set a goal of reducing the Federal paperwork burden by an additional 5 percent per year for four years.

Additional reporting is required by OIRM on the use of its funds, on statistical policy planning, and on information resources management initiatives.

Public participation in the paperwork review process is facilitated by specifying elements that agencies must include in their Federal Register notices of proposed information collection requests.

VII. SECTION-BY-SECTION ANALYSIS

SHORT TITLE

The opening section provides that this Act may be cited as the "Federal Management Reorganization and Cost Control Act of 1986."

TITLE I—IMPROVING FEDERAL MANAGEMENT

PART A—REORGANIZATION OF THE OFFICE OF MANAGEMENT AND BUDGET

Sec. 101—Purpose

This section states that the purpose of this title is to strengthen the overall management of the Federal Government, reform and improve the Government's financial system, foster economy and efficiency, establish more effective systems and structures for Government programs, improve the executive leadership of Federal departments and agencies, and build the capacity of such departments and agencies to carry out their missions.

This purpose would be carried out by:

(1) establishing a Deputy Director for Management and Finance, a Deputy Director for Budget, and an Executive Deputy Director in the Office of Management and Budget;

(2) establishing an Office of Financial Management in OMB;

(3) establishing controller functions in executive agencies;

(4) providing that OMB officials responsible for management functions shall report to the Director through the Deputy Director for Management and Finance; and

(5) requiring the President to submit an annual management report.

Sec. 102—Reorganization of the Office of Management and Budget

Section 102(a) amends section 502(b) of title 31, United States Code to create in OMB:

1. An Executive Deputy Director to carry out such functions as the Director may prescribe. The Executive Deputy Director is to act as the Director when the Director is unable to serve or when the office of Director is vacant.

2. A Deputy Director for Management and Finance to perform functions prescribed by section 505 of title 31 (see below) and such additional functions as the Director may prescribe.

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3. A Deputy Director for Budget to perform the functions prescribed by section 506 of title 31 and such additional functions as the Director may prescribe.

The Director is to prescribe the order in which the latter two deputy directors shall act for the Director when he and the Executive Deputy Director are absent or unable to serve, or when both offices are vacant.

The Executive Deputy Director has no direct responsibility for either budget or management functions. Instead, this person is to serve as the Director's right arm in coordinating initiatives that cross internal lines of authority and in administering the agency. This will furnish the Director more time to provide policy leadership and perform external roles.

Functions carried out through Deputy Director for Management and Finance

Subsection 102(b)(1) adds a new section 505 in title 31 to define in subsection 505(a) the functions of the Director to be carried out through the Deputy Director for Management and Finance, including all functions relating to:

(1) providing overall leadership in the development and implementation of Federal management policies and the coordination of programs to improve the quality and performance of managerial personnel;

(2) assisting the President in carrying out the responsibilities of the President as Chief Executive Officer of the Government;

(3) providing central policy direction and leadership in general management and managerial systems, financial management, procurement policy, grants and contracts management, information and statistical policy, regulatory affairs, property management, and in other management functions, including organizational planning and analysis and human resources management; and

(4) working with State and local governments to strengthen the Federal system and provide assistance to such governments with respect to intergovernmental programs and cooperative arrangements.

General management improvement functions

A new subsection 505(b) of title 31 enumerates the general management improvement functions of the Director to include:

(1) periodically assessing the management performance of executive agencies, and the provision of recommendations to agency heads and the President on needed corrective actions;

(2) conducting, in cooperation with executive agencies, management research, systems development, and demonstration projects, and providing assistance to executive agencies in establishing new programs and organizations;

(3) providing guidance and assistance to executive agencies in developing common automated systems to provide the President and agency heads with timely, compatible, and accurate management information; and

(4) establishing uniform policies, guidelines, definitions, and reporting requirements for the evaluations of Federal pro-

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grams and activities. OMB has not provided any such guidance since Circular A–117 was rescinded a few years ago.

Human resources management functions

A new subsection 505(c) of title 31 enumerates the Director's human resources management functions to include advising the President on the managerial requirements of executive agency positions to which Presidential appointments are made and on managerial qualifications of potential nominees for such positions. The White House personnel office performs the general function of screening candidates for Presidential appointments, but this office is not known to focus on either the managerial requirements of the office or the managerial qualifications of prospective appointees. This new OMB responsibility will provide a means for these factors to be considered in making Presidential appointments.

Other human resource management functions prescribed by the new subsection 505(c) include reporting to the President on appropriate pay and benefit levels for Federal executive level positions, advising the Director of the Office of Personnel Management and executive agencies of workforce management and personnel data system requirements, and developing government-wide policies for pay, benefits, and labor-management relations, and for integrated personnel and payroll systems. These functions are intended to supplement, rather than replace, the responsibilities of the Office of Personnel Management and executive agencies under title 5 of the United States Code.

Productivity improvement functions

A new subsection 505(d) of title 31 enumerates the productivity improvement functions of the Director which enable him to provide government-wide leadership on executive agency productivity initiatives. Included is a mandate to identify and propose the elimination of statutory barriers that inhibit opportunities to make improvements in productivity.

Organization and coordination functions

A new subsection 505(e) sets forth the Director's organization and coordination functions which include continually reviewing the Government's organization structure, overseeing the operations and management of Government corporations, developing effective coordinating mechanisms, monitoring intergovernmental administration, overseeing Government travel management, and monitoring Government privatization policies, contract administration, and other relationships between the Government and the private sector.

The Committee intends that a capability be established in OMB to monitor the activities of government corporations, government-sponsored enterprises, and other, similar organizations. For government-sponsored enterprises, OMB is expected to remain apprised of and to review their operations and financial condition. However, the Committee intends that the bill not alter existing Federal supervisory schemes established under other Federal laws for Federally chartered depository institutions and for corporations which are privately owned and generally privately financed, such as the

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Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

Review of legislative proposals

Under a new subsection 505(f), the Director is to review all executive agency proposals for legislation and agency reactions to proposed legislation which relate to the organization and management of the Government. OMB has for many years reviewed exeutive agency legislative proposals and comments on legislation proposed by others to ascertain consistency with the President's program. This new provision assigns to the Director, to be carried out through the Deputy Director for Management and Finance, the responsibility to review the organization and management aspects of such proposals.

Administrators' reporting channels

A new subsection 505(g) of title 31 requires the administrators for Federal Procurement Policy, Information and Regulatory Affairs, and Financial Management (see below) to report to the Director, and be under the supervision of, the Deputy Director for Management and Finance. This makes the deputy director the official accountable to the President, the Director, and the Congress for OMB's management activities and provides the means for better integrating the activities of OMB's statutory management offices and the Director's other management functions prescribed in subsections 505 (b) through (f). It is noted that sections 401–406 of title 41, United States Code, assign certain authorities and responsibilities to the Administrator for Federal Procurement Policy. Execution of these authorities and responsibilities is not affected by this new subsection 505(g) of title 31.

Deputy Director for Budget's functions

A new section 506 of title 31 states that the Director shall carry out through the Deputy Director for Budget all of the Director's functions, and all of the President's functions delegated to the Director, under chapter 11 of that title except the functions prescribed in section 1111, "improving economy and efficiency."

"Financial management" defined

A new section 507 of title 31 defines for purposes of chapter 5 the term "financial management" to mean all systems, controls, policies, and procedures of an executive agency which:

(1) plan, account for, document, and report on financial management and control of resources; and

(2) promote economical and efficient use of financial resources such as financial planning, budget execution, accounting, financial information systems development and maintenance, financial analysis, debt and credit management, cash management and analysis, inventory and property management, and financial reporting.

Paragraph 102(b)(2) amends the chapter analysis for chapter 5 of title 31 to insert the headings for the new sections 505–507.

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Office of Financial Management

Paragraph 102(c)(1) adds a new subchapter II to chapter 5 of title 31 establishing an Office of Financial Management in OMB.

The Office is to be headed by an Administrator for Financial Management appointed by the President, by and with the advice and consent of the Senate, who reports to the Director through the Deputy Director for Management Finance. This official is to have high personal integrity with demonstrated ability in several financial disciplines. The Administrator is to be the principal adviser to the Director and the Deputy Director for Management and Finance on federal financial management policy.

Director's and Administrator's financial management functions

A new section 513 of title 31 enumerates the Director's financial management functions to be:

(1) providing central policy direction, leadership, and guidance for, and monitoring of the Government's financial management systems;

(2) advising the President, the Congress, and agency heads on financial management matters and on the status of financial management in the Government;

(3) establishing policies for agencies, in conjunction with the Secretary of the Treasury and in consultation with the Comptroller General, and provide guidance for agencies, relating to financial management matters;

(4) providing guidance on, and monitoring agency efforts to implement, sound internal control systems;

(5) developing and annually revising a five-year financial management plan (see below);

(6) coordinating and monitoring the activities and operations of agency officials designated to carry out controller functions (see below);

(7) reviewing agency financial management plans and policies to assure consistency with overall policies, uniform application across agencies, and minimum duplication;

(8) providing guidance to the Director of the Office of Personnel Management in the development and implementation of personnel qualifications and job descriptions for agency financial management positions, and professional development and training programs; and

(9) providing advice to agency heads on the selection of agency officials designated to carry out controllership functions (see below).

The Administrator for Financial Management is assigned responsibility for reviewing and advising the Director on agency budget submissions for financial management, reviewing agency financial management systems for consistency with approved plans and effective implementation, encouraging and coordinating projects to design and implement financial management systems that can be used by more than one agency, and facilitating the exchange of information between agencies.

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Statement of objectives

A new subsection 513(c) of title 31 requires the Director, within one year of enactment, to prepare and transmit to the Congress a statement of objectives for the Federal Government's financial management activities. Such objectives are to be consistent with the financial and accounting principles, standards, and requirements prescribed by the Comptroller General; identify and address the Government's major accounting and financial management needs; identify and address executive agency and government-wide needs for reporting of financial information and provide for complete disclosure of the Government's financial condition; and describe and reflect the relationship between planning, budgeting and accounting.

Five-year plan for financial management

Under subsection 513(d), the Director is required to prepare and transmit to the Congress a five-year plan for the Federal Government's financial management activities which provides for the strengthening of accounting, auditing, and financial reporting; the development of reliable cost and performance information; the integration of accounting and budgeting systems; the integration of the Government's financial management systems in a manner which will minimize duplication and encourage Federal agencies to use systems jointly; and the establishment of internal controls for financial systems designed to ensure compliance with the federal Managers Financial Integrity Act.

The Director is to annually update the plan and transmit it to the Congress. Within 60 days after the Director has submitted a five-year plan, the Comptroller General is to prepare a report containing his analysis and comments on the plan and the progress being made by agencies to strengthen financial management.

A new section 514 of title 31 subjects the Director and the Administrator for Financial Management to the rulemaking requirements of subsections (b), (c), and (d) of section 553 of title 5, notwithstanding subsection (a) of such section.

Executive agency controller functions

Paragraph 102(c)(1) also adds a new subchapter III in chapter 5 of title 31 establishing agency controller functions in all 13 cabinet departments, including the departments of the Army, Navy, and Air Force in the Department of Defense, and in the following major independent agencies:

Environmental Protection Agency,
General Services Administration,
National Aeronautics and Space Administration,
Small Business Administraton, and
Veterans' Administraton.

A new section 521 of title 31 requires the head of each department or agency to designate an official who is compensated at Level V or above of the Executive Schedule contained in subchapter II of chapter 53 of title 5 to perform controller function outlined below. Some departments, such as the Department of Defense al-

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ready have a controller. This would be the logical official to be designated by the department head under this section 521.

A new section 522 assigns the following functions to the designated official:

(1) conduct, supervise, and coordinate all financial management activities and operations of the agency;

(2) advise the agency head on financial management;

(3) develop and maintain agency financial management systems, including accounting systems, internal control systems, and financial reporting systems which comply with applicable laws; implement the policies and procedures of the OMB Director and the accounting and internal control principles, standards and requirements prescribed by the Comptroller General; and provide for (A) complete, reliable, consistent, and timely financial information responsive to management's information needs, (B) the development of cost information, (C) the integration of accounting and budgeting systems, and (D) the systematic measurement of performance; and

(4) direct and manage agency financial management activities and operations, including preparation and annual revision of a five-year agency financial management plan, development of agency financial management budgets, recruitment and training of financial management personnel, implementation of asset management systems, and preparation and transmission of an annual report to the agency head and the OMB Director describing and analyzing of status of agency financial management and providing copies of the most recently completed annual financial statements.

In summary, the agency controllers have responsibilities which closely parallel those of the Director and the Administrator for Financial Management in OMB. They would be the "chief financial officers" for their agencies as is the OMB Director for the Government as a whole.

Financial Management Council

A new section 523 of title 31 establishes a Federal Financial Management Council consisting of the Administrator for Financial Management and the executive agency officials designated under section 521 to perform the controller functions.

The Council assists the OMB Director in identifying and establishing financial management objectives and in developing and implementing financial management plans. The Council also comments on proposed major changes in financial management operations and prepares option papers and recommendations regarding selected issues directly impacting financial management activities.

This Council is a counterpart to two existing President's councils: the President's Council of Integrity and Efficiency and the President's Council on Management Improvement. It is anticipated that all three councils will work closely together and have some role in advising the OMB Director on financial management and related matters.

Paragraph 102(c)(2) amends the chapter analysis for chapter 5 of title 31 to reflect the addition to chapter 5 of sections 511-514 and 521-523.

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OMB executive salaries and positions

Subsection 102(d) amends sections 5314 and 5315 of title 5 to provide that the three new OMB deputy directors shall be compensated at Executive Level III and that the Administrator for Financial Management shall be compensated at Executive Level IV.

Subsection 102(e) amends section 502(d) of title 31 to provide two additional executive-level positions in OMB. It is intended that these positions be used to establish associate directors or equivalent positions to assist the Director in carrying out the management functions assigned by the new section 505 of title 31.

Cost estimates for proposed regulations

Subsection 102(f) adds a new subsection (b) to section 503 of title 31 requiring the Administrator of the Office of Information and Regulatory Affairs, to the extent practicable, to prepare for each significant regulation proposed by an executive agency an estimate of the costs over each of five years which would be incurred by State and local governments in carrying out such regulation and the basis of such estimate. The statement of such estimate is to be published in the Federal Register along with the regulation.

Within one year after enactment of this provision, the Administrator is to submit a report to the Senate Committee on Governmental Affairs and the House Committee on Government Operations which identifies and defines the methodology used to estimate the costs, and contains examples of statements prepared on such costs.

Certain terms are defined for purposes of this subsection:

"Local government" means a unit of general local government, a school district, or other special purpose district established under state law.

"Regulation" means the whole or a part of an agency statement of general or particular applicability and future effect which applies to State and local governments and which is designed to implement, interpret, or prescribe law or policy or which describes the organization, procedure, or practice requirements of an agency. Such term does not include the adjudication of the result or obligations of individual parties.

"Significant regulation" means any regulation which in the judgment of the Director is likely to result in an annual cost of $100 million, or is likely to have exceptional consequences for a geographic region or a particular level of government.

Sec. 103—Effective date

Section 103 makes title I generally take effect 120 days after the date of enactment or January 1, 1987, whichever occurs later. However, section 104 (see below) takes effect on the date of enactment. In addition, officers provided for in chapter 5 of title 31, as amended by section 102 above, may be nominated and appointed, as provided in such chapter. Funds otherwise available to OMB may be used, with the approval of the President, to pay the compensation and expenses of any officers so appointed.

This section provides OMB and the executive agencies a minimum of 120 days to prepare to implement the new functions as-

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signed by this title. However, to facilitate implementation, the additional OMB officials provided in this title may be appointed on enactment to assist in the preparation.

Sec. 104—Interim appointments

Section 104 provides that if one or more officers required to be appointed by and with the advice and consent of the Senate, pursuant to the provisions of title I, have not entered office on the effective date, the President may designate another officer already appointed by and with the advice and consent of the Senate to act in the new position until it is filled. This enables the functions to be carried out without further delay.

Sec. 105—Authorization of appropriations

Section 105 authorizes to be appropriated such sums as may be necessary to carry out the provisions of this title. Such amounts shall be available until expended.

PART E—PRESIDENT'S COMMISSION ON LEADERSHIP FOR FINANCIAL MANAGEMENT IN THE FEDERAL GOVERNMENT

Sec. 111—Establishment; purpose

Section 111 establishes the President's Commission on Financial Management Leadership in the Federal Government to evaluate and make recommendations concerning the most appropriate organizational structure in the Executive Office of the President for providing leadership in the development of (1) modern, efficient, and effective financial management systems, and (2) appropriate reporting of the financial position of the Federal Government and the results of the Federal Government's operations.

This Commission is established to provide guidance to the President and the Congress on how to most appropriately structure the leadership that the Comptroller General and many others, including the Committee, believe is needed to undertake fundamental financial management reforms required for efficient and effective Federal operations and adequate disclosure of the Government's financial position.

S. 2230, as originally introduced, provided for an Office of Federal Management in the Executive Office of the President, and within it, an Office of Financial Systems, to provide leadership in financial management and all other areas of management needing attention. The Comptroller General, in a June 19, 1986 letter to Senator David Durenberger, expressed support for the establishment of a Chief Financial Officer for the United States in the Executive Office of the President or, alternatively, in a separate office. The Committee was concerned, however, that establishing a separate office for financial management alone would (1) isolate this function from all other management functions and (2) provide insufficient "clout" to carry out the mandates in title I for financial management reform.

For reasons discussed elsewhere in this report, the Committee adopted a substitute for the original title I of S. 2230 which reorganizes OMB by establishing, among other things, a Deputy Director for Management and Finance, an Administrator for Financial

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Management, and an Office of Financial Management. The OMB Director is assigned most of the financial management functions, making him, in essence, the chief financial officer.

When Senator Durenberger offered an amendment to the proposed substitute for title I establishing a chief financial officer, Senator Eagleton proposed that the bill instead be amended to establish the Commission provided for in this section 111. The Committee agreed to Senator Eagleton's proposal and Senator Durenberger withdrew his amendment. This will enable OMB to move forward under the substitute for title I on the needed financial reforms and the Committee to revisit the organizational issue after the Commission has made its recommendations.

Sec. 112—Functions

Section 112 defines the Commission's functions, which are to:

(1) evaluate the relationship of financial management to program operations, budget formulation processes, and other management functions of executive agencies, especially information resources management functions, and assess the impact of alternative organizational structures for financial management leadership on such operations, processes and functions;

(2) compare alternative organizational structures in the Executive Office of the President, including a chief financial officer, for carrying out provisions of law relating to financial management and make recommendations for the structure which will provide the most effective leadership;

(3) determine the most appropriate functions and responsibilities for this organization; and

(4) determine appropriate mechanisms and administrative arrangements for this organization to ensure compliance by executive agencies with laws, standards, principles, and policies relating to financial management and appropriate reporting of the Federal Government's financial position and results of operations.

The fcurth item highlights the Committee's concern that whichever organizational arrangement is recommended, such organization must be provided sufficient authority to ensure that the needed reforms are implemented.

Subsection (b) of section 112 requires the Commission to consult with the Director of OMB, the Secretary of the Treasury, and the Comptroller General. All three officials play major roles in financial management and their views should be considered in formulating the Commission's recommendations.

Subsection (c) requires the Commission to rely, to the extent practicable, on available information concerning financial management. Several witnesses at the Committee's May 13, 1986 hearing addressed financial management problems. There are also numerous reports of the Grace Commission, the General Accounting Office, Price Waterhouse and others for the Commission to draw on.

Sec. 113—Membership

Section 113 provides that the Commission shall consist of five members appointed by the President, two with experience as senior

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executives of nationally recognized public accounting firms, one with experience as a senior executive of a nationally recognized management consulting firm, one with experience in the operations of the executive branch, including familiarity with accounting practices and the preparation of financial reports, and one faculty member of an academic institution distinguished in the fields of public administration and financial management. The Committee intends that, collectively, the Commission membership represent top-notch experience and capability in financial management, the management of private sector organizations and Federal programs and operations, and accounting and public administration theory and practice.

The President is to appoint the members of the Commission within 90 days of enactment of this Act, and the members shall be appointed for the life of the Commission. The President is to designate one member as chairman, and any vacancy is to be filled in the manner in which the original appointment was made. Commission members who are not officers or employees of the Federal Government are to be compensated at level IV of the Executive Schedule for the time they are engaged in the performance of the Commission's duties. Members who are officers or employees of the United States shall serve without additional compensation. All members are allowed travel expenses.

Sec. 114—Reports

Section 114 requires the Commission to prepare and transmit its report to the President and the Congress no later than six months after the Commission's appointment. The report is to contain not only a detailed statement of the Commission's findings and conclusions and its recommendations for legislation and administrative actions, but also a plan for implementation.

Within 90 days after receiving the Commission's report, the President is to prepare and transmit to the Congress a report which specifies the actions taken and planned by the President to implement the Commission's recommendations.

Sec. 115—Administrative provisions

Section 115 provides appropriate administrative authority for the Commission to carry out its functions, including authority to appoint and fix the compensation of an executive director and staff, which shall not exceed the rate for a GS-18 in the General Schedule; detail of Federal employees to the Commission without reimbursement; procurement of temporary and intermittent services; authority to hold hearings and receive such evidence as the Commission considers appropriate; and access to information from any department or agency of the United States. The Administrator of General Services is to provide administrative and support services to the Commission on a reimbursable basis.

Sec. 116—Termination

Section 116 provides that the Commission shall terminate 30 days after the date on which it submits its report to the President and the Congress.

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Sec. 117—Authorization of appropriations

Section 117 authorizes appropriations of $2 million which shall remain available until the date on which the Commission terminates.

Sec. 118—Definitions

Section 118 defines the terms "Commission" and "executive agency" for purposes of this part of title I.

PART C—ANNUAL MANAGEMENT REPORT

Sec. 121—Presidential report

Section 121 amends chapter 11 of title 31, United States Code, by adding at the end there of a new section 1115 requiring an annual management report.

A new subsection 1115(a) of title 31 requires the President to submit with his annual budget a report on the management of the executive branch of Government covering the most recently completed fiscal year, the current fiscal year, and the fiscal year for which the budget is submitted.

This report is to include, first, an overview of the general management improvement goals of the President for the executive branch for such fiscal years. OMB issued a report entitled, "Management of the United States Government, Fiscal Year 1987," in February 1986 which contained a message from President Reagan summarizing the results of his Administration's management initiatives under Reform '88 and describing the goals of this program. A similar statement in the report mandated by this section would satisfy this requirement.

Second, the report is to include a summary of the management problems and issues for the executive branch, and the major management improvement initiatives and accomplishments, in the following areas:

program delivery systems;
human resources management;
productivity;
information resources management;
financial management;
procurement and grants management;
property management; and
any other relevant subject areas.

This provides a basic framework which will be consistent from year to year for reporting on the major initiatives underway and planned under the auspices of OMB and the other central management agencies. The President is required to describe not only the accomplishments of his management program, but also the problems and concerns this program is designed to address. There may be aspects of such problems outside the scope of the President's program requiring the Congress' attention that should also be covered. For example, the President may wish to call the Congress' attention to the need for a consolidated procurement statute which was recently recommended by the Packard Commission.

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The OMB management reports issued in 1985 and 1986 also focused in initiatives under OMB's auspices. Little or no mention was made of government-wide initiatives led by other central agencies, such as the Office of Personnel Management's performance management and position classification initiatives. The human resources management area listed above is intended to provide a vehicle for discussing these other initiatives. Other management areas, such as "property management" provide a vehicle to discuss the problems being addressed and the initiatives undertaken by the General Services Administration.

The Committee intends for the coverage to be comprehensive, but the level of detail to remain about the same as in past management reports. The emphasis should be on major, government-wide initiatives. However, OMB may wish to note selected major projects at individual agencies.

Third, the report is to summarize for each initiative discussed under the requirement above, where feasible and appropriate, the purpose of the initiative, the progress and problems in the implementation of the initiative, and any significant and identifiable impact of the initiative on agency operations.

The Committee seeks information on the additional costs, cost savings, and improvements in efficiency, productivity, or service delivery but only where appropriate. The Congress should know whether these initiatives are cost-effective and are resulting in service delivery improvements. It is understood, however, that some costs and savings cannot be easily quantified and that a cause-and-effect relationship cannot always be shown between a given initiative and a change in outcome of a targeted agency program.

Fourth, the report is to provide proposals for legislative or other action to improve the management and organization of the executive branch, including proposals to remove statutory impediments to improving the management of the executive branch. Examples of such proposals include Paperwork and Regulatory Simplification Act (S. 2010) and the Congressional Reports Elimination Act (S. 992) forwarded to the Congress last year.

Fifth, the report is to include a summary of each significant new management policy for the executive branch which has been adopted or which is planned for the current fiscal year or the fiscal year for which the budget is submitted, and a discussion of the reasons for such policy. This is intended to provide the Congress with a summary checklist of executive orders and OMB bulletins and circulars involving management subjects being developed or planned, similar to the regulatory agenda submitted to OMB by executive agencies pursuant to Executive Order 12498.

Sec. 122—Review of report by Comptroller General

Section 122 adds a new subsection (g) to section 719 of title 31 requiring that, within 90 days after the President has submitted his management report, the Comptroller General shall prepare and transmit to the Congress a statement analyzing such report.

The Comptroller General's statement is to contain an evaluation of items in the President's report which he considers to be of particular interest to the Congress, a specification of any issues raised

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by the report which require further clarification, and an analysis of the extent to which the report complies with the requirements of the new section 1115 of title 31. The Comptroller General is also given the option of making his own recommendations for improvements of the management or organization of the executive branch, including modification or repeal of statutory impediments to efficient and effective management.

This statement will give Congress an independent analysis of the President's report and whether such report complies with the requirements of section 121 above. It also provides the Comptroller General an opportunity to summarize any work his office has undertaken to evaluate the specific management initiatives discussed in the President's report.

The Committee expects a comprehensive statement from the Comptroller General in response to this section. However, it urges that his office not unduly burden OMB with information and documentation requests in order to comply with this requirement, especially during the weeks immediately prior to completion of the President's budget. Conversely, OMB should cooperate fully with the General Accounting Office in providing information needed to comply with this section.

TITLE II—ACCOUNTING AND INTERNAL CONTROL SYSTEMS

Sec. 201—Finding and purpose

Section 201 states that the Congress finds that executive agencies must have reliable and effective accounting and internal control systems. This title would require, within 3 years after the date of enactment, that agency financial systems conform to the accounting principles, standards and related requirements and with the internal control standards, as required by sections 3511 and 3512 of title 31. The Committee is reaffirming longstanding Congressional intent, mandated over 35 years ago by the Accounting and Auditing Act of 1950, as amended by the Federal Managers' Financial Integrity Act of 1982.

Sec. 202—Federal budget requirements

Section 202 amends section 1105 of title 31 by adding a new subsection which does two things. First, the head of each executive agency is to include in his annual budget submission a statement as to whether and to what extent the information in the budget was generated or supported by accounting systems that conform to the principles, standards and related requirements established pursuant to title 31 and the requirements of the Administrator for Financial Management.

Second, to the extent an agency's accounting system does not conform, the agency head is to include in the statement (1) an analysis and explanation of the system's problems, (2) information on the steps taken to assure that Congress can rely on the accuracy of the information in the budget coming from the system, and (3) the date by which it is expected the system will be in conformance.

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Sec. 203—Accounting systems

Section 203 amends section 3512 of title 31 to provide authority to the Administrator for Financial Management necessary to carry out the provisions of sections 3511 to 3513 of title 31 as amended by S. 2230. The Administrator is to provide consultative assistance to agencies in the development and enhancement of their accounting and internal control systems. As detailed in title I of this bill, the Committee is looking to the Administrator to provide leadership, direction, guidance, and monitoring of the Government's financial management systems.

The Committee anticipates that there will be major improvements in the Government's financial management systems which a wide range of organizations—most notably the Comptroller General, the Grace Commission and Price Waterhouse—have said are in need of major overhaul. The Comptroller General, in a February 1985 report, "Managing the Cost of Government," calls for comprehensive financial management reform, and a reshaping of the Government's financial management structure, guided by an overall plan so that agencies work toward a common set of long-term financial management goals.

The Committee supports the need for financial management reform and the Comptroller General's proposal for the development of a modern system that will serve the needs of Government and the public in the last decade of the 20th century and beyond. The Committee's objective is to give the Administrator the necessary tools and authority, or "clout", to accomplish the needed reforms and to put an end to the 35 years of frustration, since passage of the Accounting and Auditing Act of 1950, that have surrounded Congresses attempts to mandate acceptable accounting practices and systems.

The Administrator is to review the agencies' reports under the Federal Managers' Financial Integrity Act (section 3512 of title 31), Comptroller General reports and additional information as appropriate and, after consultation with the Comptroller General, determine whether the agency's accounting and internal control systems substantially comply with the requirements of section 3512 of title 31.

If, at any time after three years following the effective date of S. 2230, the Administrator, after consultation with the Comptroller General, determines that an agency's accounting or internal control system do not substantially comply with the requirements of section 3512, several options are available to the Administrator. First, the accounting and other financial management operations of the agency supported by the system are subject to the direction and supervision of the Administrator who, in carrying out this authority, may request the assistance of an agency which has systems already in compliance.

Second, the Administrator is authorized to direct the head of the agency, whose systems are not in compliance, to use any funds available to the agency for administrative expenses to take necessary actions to bring the agency's accounting and internal control systems into compliance. In these cases, the Administrator, within 5 days of taking such action, is to transmit a written statement to

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the House and Senate Committees on Appropriations specifying the amount of funds redirected to improving the agency's systems. Also, section 1105 of title 31 is amended to require that the President include in the annual budget a separate statement of the total amount of funds so redirected by the executive agencies during the most recently completed fiscal year.

Title III—Agency Financial Statements

Sec. 301—Finding and purpose

Section 301 states that effective and efficient management of Government resources and the making of informed policy and programmatic decisions can better be achieved if the Congress and executive agencies have complete, accurate, and timely financial information. This title takes steps to ensure that the needed information is available and can be relied upon as an important tool in managing the Federal Government by requiring that agencies prepare annual financial statements and that these statements be able to survive the scrutiny of a biennial audit by an independent auditor. This title also requires an annual audit of all Government corporations.

The Committee believes the time for federal agencies to prepare annual financial statements is long overdue. Since 1934, publicly-held corporations have been required by law to prepare annual financial statements which can sustain the scrutiny of an independent audit. In addition, the Single Audit Act of 1984, passed under the leadership of this Committee, requires State and local governments receiving federal assistance to have comprehensive audits of their financial statements.

Sec. 302—Accounting requirements

Section 302 amends section 3511 of title 31 to add the Administrator for Financial Management to those with whom the Comptroller General must consult in prescribing accounting standards, and to provide for the development of a method for preparing financial statements as an integral part of an agency's financial disclosure.

Sec. 303—Preparation and audit of statements

Section 303 amends subchapter II of chapter 35 of title 31 by adding two new sections. New section 3515 requires agencies to prepare financial statements, beginning with the first full fiscal year following enactment of S. 2230, which present the financial position and results of operations. This requirement does not apply to the Central Intelligence Agency nor are agency financial statements required to include any information with respect to intelligence activities as defined in section 3.4(e) of Executive Order 12333, issued December 4, 1981.

It is the Committee's intent that the preparation of agency financial statements will instill discipline and coherence in financial management and accounting, to ensure data accuracy, and to provide a complete picture of the activities and accomplishments of Federal agencies, and will provide a strong impetus for agencies to improve their financial management reporting systems. The Com-

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mittee does not advocate the wholesale adoption of business-type financial statements for the federal government. Rather, the Committee expects the development of financial statements tailored specifically to the unique circumstances and requirements of the federal government's individual components.

New section 3516 provides for the audit of the financial statements on a biennial cycle, beginning with fiscal 1991. The audit is to be in accordance with generally accepted Government auditing standards issued by the Comptroller General and is to be performed by (1) the agency's Inspector General, (2) an independent internal auditor as defined by generally accepted Government auditing standards, or (3) an independent external auditor as defined by generally accepted Government auditing standards. The audit report is due to the agency head and the Congress within 180 days of the end of the fiscal year, and a copy is to go to the President among others. The key is have an independent audit and to provide some flexibility in selecting the auditor.

At the Comptroller General's discretion, or upon request of a committee of Congress, the Comptroller is to perform the audit, and it is anticipated that this will occur. Also, the Comptroller General may review any audit conducted under this section to ensure compliance with accounting and auditing standards, and is to report the results of any such review to the Congress together with appropriate recommendations.

The Administrator for Financial Management, in consultation with the Comptroller General, the agency head and the Inspectors General, is to submit to Congress a plan for ensuring that the required audits are completed in accordance with the biennial schedule. The Administrator is allowed to extend or compress the 2-year audit schedule based on the adequacy of the underlying accounting and internal control systems and with the agreement of the Comptroller General; but an audit must be performed at least once every 3 years. The Administrator is to provide to the Congress a copy of the schedule and the reason for changing the frequency of an audit where other than a biennial schedule is adopted.

Sec. 304—Audits of Government corporations

Section 304 amends section 9105 of title 31 to require that all Government corporations be audited annually by an independent external auditor, selected by the corporation in consultation with the Comptroller General. Presently, the law calls for an audit by the Comptroller General at least once every 3 years.

The audit is to be conducted in accordance with principles and procedures applicable to commercial corporate transactions as is presently specified in section 9105 of title 31. But to meet the reporting requirements of section 9106 of title 31, as amended (see below), it is expected that the audit will include a determination as to the adequacy of internal controls and whether the Government corporation has complied with laws and regulations. It is expected that auditors will be alert to situations or transactions that could be indicative of fraud, abuse, and illegal acts, and if such evidence exists, extend audit steps and procedures to identify the effect on the Government corporation's financial statements.

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The Comptroller General is authorized to review the work of the independent external auditor and is to report to the Congress on the results of these reviews. It is expected that the Comptroller General will assure the adequacy of the audit and determine the adherence to auditing standards. The Comptroller General is to have access to all books, accounts, financial records, etc. of the Government corporation and the corporation's auditor.

At the Comptroller General's discretion, or upon request of a committee of Congress, the Comptroller General is to perform the audit in lieu of the independent external auditor. In these cases, the Comptroller General is to be reimbursed for the full cost of the audit as determined by the Comptroller General. The Comptroller General is to retain any such reimbursements, without fiscal year limitation, and is to use these funds for the purposes of carrying out this section.

Sec. 305—Financial reports of Government corporations

Section 305 amends section 9106 of title 31 in line with section 9105 changes (see section 304 above) to specify that the Government corporation is to submit to Congress a report of financial position and results of operations, including the audit conducted under section 9105, not later than 180 days after the end of the corporation's fiscal year.

The contents of the financial report are specified and include (1) a balance sheet showing assets, liabilities, capital and surplus or deficit, (2) statements of income and changes in financial position, (3) an opinion on the financial statements resulting from the audit, (4) a statement of whether any transaction was carried out or was made without authority of law, and (5) a report on the adequacy of the Government corporation's internal controls. At the time the report goes to Congress, copies should be provided to the President, the Administrator for Financial Management, the Secretary of the Treasury, and the Comptroller General.

TITLE IV—CASH MANAGEMENT

Sec. 401—Purpose

Section 401 states that the purpose of this title is to increase the efficiency of efforts to manage cash throughout the Government by providing additional procedures and incentives for cash management through (1) the establishment of disbursement objective similar to collection objectives which were mandated in the Deficit Reduction Act of 1984 and are detailed in section 3720 of title 31, (2) the adoption of intergovernmental financing concepts developed by the Federal/State Cash Management Reform Task Force and agreed to in June 1983 and November 1985 memoranda of understanding, (3) the expansion of the use of lockboxes as a means of speeding up the deposit of Government collections.

Sec. 402—Disbursement objectives

Section 402 adds subsection 3720B to subchapter II of chapter 37 of title 31 to allow Treasury to accomplish the same objectives for disbursements as are now permitted for collections under the subsection 3720 of chapter 37.

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Agency heads are to provide for the timely disbursement of Federal funds through cash, checks, or electronic funds transfer in accordance with regulations prescribed by the Secretary of Treasury, in consultation with the Administration of Financial Management. Treasury would be permitted to penalize agencies for not adhering to Treasury disbursement regulations.

The Secretary is authorized to collect from the agency an amount determined to be the cost to the general fund caused by an agency's noncompliance. Such assessments are to be paid from amounts appropriated or otherwise available to carry out the program to which the disbursements relate. Any such amounts collected would go to the Cash Management Improvement Fund, already established under section 3720, which is a revolving fund to be used for improving cash management.

Sec. 403—Payment of interest

Section 403 amends the Intergovermental Cooperation Act (31 U.S.C. 6503(a)), consistent with the Memorandum of Understanding For Financing Federal Assistance Programs, agreed to by the Joint Federal/State Cash Management Reform Task Force in June 1983 and with a subsequent Memorandum of Understanding on November 1, 1985, detailing amendments to the Intergovernmental Cooperation Act and supporting administrative regulations to provide equity in the transfer of funds between the Federal Government and the States. The goal is to create equitable and realistic policies and procedures to govern cash transaction between the Federal and State Governments.

The Joint State/Federal Cash Management Reform Task Force was created in 1983 at the request of the Chairman of the Governmental Affairs Subcommittee on Intergovernmental Relations in response to a stalemate reached between the Department of Health and Human Services and a number of States over the implementation of a new cash management procedure called delay of drawdown letter of credit. This procedure calls for the establishment of historical check clearance patterns for Medicaid and Aid to Families with Dependent Children payments. Under this procedure, the States would then be reimbursed based on this established clearance pattern rather than drawing down funds when the checks or warrants are issued as is the current practice.

This created statutory and constitutional difficulties for almost one half of the States which have laws and/or constitutional prohibitions against issuing checks or warrants unless sufficient funds are in the State treasury at the time of the issuance. Because the States and the Department of Health and Human Services could not reach an agreement on this issue, a number of Senators urged that the delay of drawdown program be rescinded and that the Federal Government and the States seek to reach an accord on how to proceed toward more equitable cash management principles.

The Task Force consists of six State fiscal officials and six Federal officials for OMB and the Departments of Treasury and Health and Human Services. In July 1983, the Task Force signed a Memorandum of Understanding that has governed all subsequent discussions, negotiations and agreements of the group. In addition, the

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Task Force agreed that no additional States would be required to adopt the delay or drawdown letter of credit method unless that State requested to do so. The 17 intergovernmental cash management policies for financing Federal assistance programs adopted by the Task Force are attached as part of the July 1983 Memorandum of Understanding.

Following the policies established by the July 1983 Memorandum of Understanding, four States—Virginia, Indiana, Wisconsin and California—in conjunction with the Department of Treasury and other Federal agencies, conducted pilot programs to test several new cash management procedures. The pilot included the calculation of interest that would be exchanged between the Federal and State governments for late payments of grant funds or early drawdown of Federal funds, respectively. Although interest was calculated, no interest was exchanged. These pilots were concluded successfully with regard to the cash management procedures; however, during the tests, the States indentified a number of issues that needed to be resolved in order to ensure equitable treatment for the States in cash management matters.

Until the signing of the November 1, 1985, Memorandum of Understanding, the Task Force sought to address the equity issues identified by the States and to incorporate solutions into proposed legislation as well as proposed amendments to Treasury regulations and OMB circulars concerning cash management procedures. The November 1985 Memorandum of Understanding encompasses the basic agreements of the Task Force with which the Committee agrees. The Committee understands that no interest will be exchanged under the provisions of the Treasury regulations or the OMB circulars until appropriate amendments to the Intergovernmental Cooperation Act have been signed into law.

In addition, the Committee understands that the Department of Health and Human Services and OMB are working with several States to test the feasibility of an annual grant award process as outlined in the Memorandum of Understanding. The Committee urges the Department and OMB to move expeditiously to commence this pilot no later than the beginning of Federal fiscal year 1987. The Committee looks forward to the report of the feasibility of extending the annual grant award process to all Federal programs.

Section 403 of S. 2230 contains the primary legislative recommendations of the Task Force for amending the Intergovernmental Cooperative Act. The Committee's intent is: (1) to create a set of government-wide cash management policies and practices that can govern exchange of funds between the Federal and State governments; (2) to establish intergovernmental cash management practices which assure that neither the Federal or State government benefit or suffer financially as a result of the transfer of cash between the two governments; and (3) to ensure that the States and Federal governments accord each other the same equitable treatment with regard to the timing and manner of transfers and management of funds.

The amendment, which replaces section 6503 of title 31, provides that:

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(1) Consistent with program purposes and regulations of the Secretary of Treasury and by means mutually agreed upon by the Secretary and a State, the agency head is to minimize the time elapsing between the transfer of funds by Treasury and the issuance of payments by a State, and conversely, States are to minimize this timeframe. (In implementing this provision, as well as those that follow below, there is to be a set of governmentwide cash management policies and practices that govern all exchanges of funds between Federal and State governments as agreed to in the Federal/State Memorandum of Understanding of June 1983 and reiterated in Memorandum of Understanding of November 1985.)

(2) The Secretary is to issue regulations that require a State to pay interest on Federal funds that are received in advance of need (from the time Federal funds are deposited to the State's account until the time that funds are paid out of a State's account in order to redeem checks or warrants, or make payments by other means for program purposes).

(3) Conversely, if a State disburses its own funds for program purposes in accordance with Federal law, regulation, or Federal-State agreement, the State is to be paid interest by the Federal Government using the same criteria applied to cases where the State receives Federal funds in advance of need (that is, from the time the State's funds are paid out to redeem checks or warrants, or make payments by other means, until the Federal funds are deposited to the State's bank account).

(4) Interest payments are to be calculated using the average bond equivalent rates of 13-week Treasury bonds auctioned during the period for which interest is calculated, as determined by the Secretary of Treasury.

(5) Interest payments received by the Federal Government from a State are to be credited as miscellaneous receipts and are not to go to the programs involved, with one exception. In cases where the Secretary of Treasury is required by statuatory and regulatory requirements to invest funds in a specific account, any related interest payments are to be credited to such account. The Highway Trust Fund is one example. Another is the Unemployment Compensation Trust Fund for which funds flow through State accounts prior to being deposited in the Federal Treasury. Any interest payable by a State to the Federal Government under this program is to be credited to the appropriate trust fund.

(6) Interest payments to a State from the Federal Government are to come from funds not otherwise appropriated to Treasury, commonly called the General Fund. To provide accountability, the President's budget (as submitted under section 1105 of title 31) is to specify for the most recently completed fiscal year, interest paid to and by the Federal Government under the new section 6503.

(7) Where a State receives a refund of grant funds, those refunds are to be returned to the applicable Federal agency program or applied to reduce any amounts owed the State by the Federal Government under the program. Interest earned by the State on these funds is to be returned to the Federal Government, and to accomplish this, these amounts are to be considered in setting the interest amounts due between the State and Federal Government.

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(8) The cash management principles detailed in the new section 6503 apply to programs (present or future) where the Federal Government makes payments in behalf of a State. The principal example is the Supplemental Security Income program in which a number of States supplement the basic Supplemental Security Income grant. For this program, the Federal Government makes the supplement payment for a State by adding the State's amount to the check or payment the recipient receives from the Federal Government. A State's remittance to the Federal Government for the State share of the payment is to be timed to coincide with the clearance time of Federal checks or payments by any other means. If not, interest would be due the Federal Government under the provisions of this section. Similarly, if the Federal Government holds a State's remittance for its share of the payment in the Federal Treasury prior to making the payment to the recipient (meaning the State payment was made early), interest would be due the State under the provisions of this section.

(9) A State is not required to deposit grant funds received from the Federal Government in a separate bank account but is to account for these funds as Federal grant money and is to report periodically on the status and use of these funds. Records related to grant are to be available to the agency head and the Comptroller General for auditing in accordance with the Single Audit Act (chapter 75 of title 31).

(10) The Secretary of Treasury is to prescribe the methods of paying interest between the States and Federal Government but must assure comparable treatment for both parties and may offset amounts owed.

(11) The Inspector General, or an agency official performing similar functions where an Inspector General has not been established in law, is to periodically audit Federal agency implementation of this section. States are expected to make similar reviews under the scope of work performed under the Single Audit Act (chapter 75 of title 31, United States Code).

(12) Consistent with Federal program purposes and regulations, the Federal Government is to execute grant awards on a timely basis to assure the availability of Federal funds when needed by a State to make payments under a Federal program.

(13) Costs incurred by a State to determine the amounts due under this section are to be considered by Treasury in establishing the amount of interest to be paid by a State. It is anticipated that States will keep track of those payments for which interest should be paid by the Federal Government or a State and, if so, will be reimbursed for the additional cost to the State of determining the interest due.

(14) New section 6503 applies to all Federal programs and supersedes any Federal law or regulation in effect at the time of enactment of S. 2230.

(15) New section 6503 is effective upon enactment except that States and the Federal Government have 2 years before the interest payment procedures go into effect. It is anticipated that this will give both parties the necessary time to make improvements in cash management practices and procedures and to put into effect

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the system needed to implement the interest payment provisions of this section.

Sec. 404—Improving the collection and deposit of Government receipts through national lockbox systems

Section 404 is established for the purpose of improving the collection and deposit of Government receipts through lockbox systems. A lockbox system is the use of locked Post Office boxes to receive payments and to speed up the deposit of collections to the Government's account. Persons owing money to the Federal Government, instead of remitting the payment to the executive agency involved, transmit such payments to a lockbox. Payments are collected from the lockbox by a financial institution and credited to the Government's account without any action by the Federal agency involved.

The Secretary of Treasury is to study and make recommendations for the establishment of lockbox systems. In making the study, the Secretary is to:

(1) consider, among other things, the feasibility and needs of each agency and the benefits and costs of establishing such systems;

(2) develop adequate internal controls and accounting procedures to protect the Government interests and to assure payments are promptly and fully credited to the Federal Government's account;

(3) develop criteria for adoption of lockbox systems by executive agencies;

(4) analyze the feasibility and costs of operating lockbox systems through Treasury, the Federal Reserve Board, or other appropriate executive agencies (rather than through a financial institution); and

(5) develop recommendations for the establishment of lockbox systems by executive agencies, with the cost of establishing and operating the systems to be paid by appropriated funds.

The report on the study is to be submitted to Congress within 180 days of enactment of S. 2230. Within 90 days following the report, the Secretary, in consultation with the Administrator of Federal Management, is to prescribe guidelines for establishing lockbox systems. The agencies then have 90 days to submit plans to Secretary for implementing the guidelines and establishing lockbox systems or specifying reasons why a lockbox system is not feasible or cost effective.

TITLE V—CREDIT MANAGEMENT

Sec. 501—Purpose

Section 501 states that the purpose of this title is to strengthen the overall management of Federal credit programs, increase of efficiency of Governmentwide efforts to collect the billions of dollars of debts owed the Government, and provide additional procedures for the management and collection of these debts. Credit management and debt collection have long been serious problems in the Federal Government. While there have been improvements since the Congress enacted the Debt Collection Act of 1982 (subchapters I and II, chapter 37 of title 31), the Comptroller General and others

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have found that substantial problems remain and have called for additional legislation as provided for in this title.

Sec. 502—Improvement of credit management programs

Section 502 amends title 31 by adding a new chapter 38 entitled "Credit Management" as follows:

Subchapter I—General Provisions

Section 3801 provides definitions for a host of terms associated with credit management and debt collection.

Section 3802 requires that agency heads prepare, and update annually, comprehensive credit management and debt collection improvement plans. The minimum content of the plan is specified in this section and includes the establishment of credit management and debt collection practices, procedures, and regulations, the assignment of responsibility for these functions within the agency, the identification of weaknesses and corrective actions, the production of accurate financial reports and information, and the identification of collection targets. The intent is to provide direction and accountability for solving the long-standing problems in this area which should increase collections appreciably and reduce future delinquencies. The Administrator for Financial Management is to review the agency plans to assure consistency with overall objectives and requirements of this title and other related requirements, and uniformity across the Government.

Subchapter II—Credit Extension and Administration

Section 3811 requires that the Administrator for Financial Management establish Federal credit management policies and promulgate implementing regulations. Such policies and regulations are to apply to all direct loans, loan guarantees, loan insurance, financial contracts to support borrowing, and debts arising from contracts, grants, and other administrative arrangements, and to all executive agencies and to Government corporations unless exempted from control by other statutory authority. The section enumerates specific credit practices to be included in the Administrator's regulations so that the best practices of Government and the private sector are incorporated. The regulations are to be promulgated in accordance with section 553 of title 5 (the Administrative Procedure Act). The period for public comment is to be at least 90 days. The Administrator is to provide copies of the final regulations to the Senate Committee on Governmental Affairs and the House Committee on Government Operations. Also, the Secretary of the Treasury, in consultation with the Administrator, is to prescribe minimum requirements for contracts for all loan or loan guarantees.

Section 3812 provides that agency legislative proposals to establish new credit programs or to amend existing ones are to include an explicit statement on any subsidies in

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direct or guaranteed loan programs so that the Congress will know the cost of the program.

Section 3813 states that it is the policy of the Congress that interest rates in all new direct loan programs are to be related to market rates for comparable private sector loan programs (for example, the rate may be 1 percentage point below the private sector rate in the case of a subsidized loan), and are to be adjusted annually to reflect changes in the private sector rate. The adjusted rate would only apply to new loans made under the program after the date of the annual adjustment, and a borrower would continue to pay whatever rate was in effect at the time of the loan agreement in accordance with the terms of the loan agreement.

Section 3814 requires that Federal loan or loan guarantee funds are not to be made available to any applicant who defaults on a Federal loan or loan guarantee made after the effective date of S. 2230 unless the new loan or guarantee is necessary to protect the Government's interests, the default was discharged under Federal bankruptcy laws, or the default has been cured (made current or paid in full).

Section 3815 requires that loan and loan guarantee contracts contain default and acceleration clauses. Default clauses are to provide for the borrower to be assessed interest from the date of default at the greater of the rate due under the loan or loan guarantee contract or the rate prescribed by the Secretary of the Treasury under section 3717 of title 31. Acceleration clauses provide that upon default the entire remaining principle balance is due and subject to collection. If the agency head determines that these requirements are not appropriate or in the best interests of the Government, the agency is not required to meet the requirements but must report the reasons for such a determination to the Congress.

Section 3816 provides that each Federal loan applicant is to be provided a notice of collection policies in advance of receiving a loan which addresses the applicant's repayment responsibilities under the terms of the loan agreement and the Federal Governments debt collection policies and practices. Applicants are required to certify in writing that they have read and understand the contents of the notice and the terms of the loan agreement. The Administrator for Federal Management, in consultation with the Secretary of the Treasury, is to develop the format and prescribe the format of the notice within 90 days of the enactment of S. 2230.

Section 3817 requires that, for each Federal loan, the agency is to maintain appropriate and necessary documents and information, and details the information that is to be included to properly administer and collect loans.

Section 3818 requires the President to conduct a study to determine if any Federal direct loan programs could be carried out, in whole or in part, by private lending institu-

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tions without Government guarantees. Direct loans through private lending institutions would have to be at least as cost effective as Federal direct loan programs and in accordance with the objectives of the statutes authorizing the loan programs. A report on the results of the study, together with any recommendations (including legislation) that the President considers appropriate, is due within 1 year of the enactment of S. 2230.

Section 3819 provides that subchapter II is effective 90 days after the date of enactment of S. 2230. There is one exception. Section 3816 above requires that the format and requirements for the notice of collection policies be prescribed within 90 days of enactment.

Subchapter III—Debt Management

Section 3812 requires each agency, as part of its budget request and in consultation with the Administrator for Financial Management, to develop and specifically identify collection targets for all agency credit programs. This provision is to take effect beginning with the 1988 budget request. The regulations promulgated under section 3811 above are to include standards governing the establishment of agency collection targets. Certain factors to consider in establishing the targets are specified in section 3821. The collection targets are to be reviewed and adjusted as necessary annually.

Section 3822 requires each agency, within 1 year of the enactment of S. 2230, to develop delinquency and default standards for each loan and loan guarantee program and to report the standards to the Congress. Also, the subsidy statement required under section 3812 above is to include delinquency and default standards.

Section 3823 provides that, within 2 years of the enactment of S. 2230, the credit management and debt collection systems and operating policies of each Federal agency having loan programs be audited by the Inspector General (or an equivalent where there is not a statutory Inspector General). The audit is to determine, among other things, whether the requirements of title V of S. 2230 are being met. Copies of the audit report are to be provided to the Congress and the Administrator for Financial Management. Within 60 days of the report, the agency head must furnish to the Congress an explanation and a plan of action to correct any weakness disclosed by the audit.

Section 3824 gives agencies no more than 1 year to issue all final regulations required by new chapter 38 and the Federal Claims Collection Act of 1966 as amended by the Debt Collection Act of 1982 (subchapters I and II of chapter 37 of title 31).

Section 503—Use of credit bureaus

Section 503 amends section 3711(f) of title 31 to require that agencies report delinquent debts to credit reporting agencies. Pres-

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ently, the law authorizes reporting to credit reporting agencies but does not require agencies to do so.

Section 504—Use of collection agencies

Section 504 amends section 3718(a) of title 31 to require the use of private collection contractors unless the agency head, in consultation with the Administrator for Financial Management, determines this requirement is not appropriate or in the Government's best interests. In such cases, the agency head must report the reasons for such a determination to the Congress. Presently, section 3718(a) authorizes the use of private collection contractors but does not require agencies to do so.

Section 505—Routine salary adjustments

Section 505 amends section 5514(a) of title 5 by adding new paragraphs (5) and (6). New paragraph (5) states that the due process requirements for involuntary salary adjustments are not to apply to intra-agency deductions for routine administrative overpayments which are the result of clerical or administrative error or delays in the processing of pay documents and which are rarely controversial or disputed. Employees are to be given reasonable opportunity to dispute the deduction; but, this need not be done before making the deduction to the employees pay and is not to be done before making the deduction in cases where the debtor's employment is about to terminate.

This change is being made to remedy a problem arising from the application of the Debt Collection Act of 1982. Whereas routine salary adjustments arising from clerical errors or delays in processing payroll documents were easily handled previously, Justice believes that the due process requirements of the Debt Collection Act of 1982 apply to these transactions (meaning, for example, that the agency must provide written notice to the employee and an opportunity for a hearing before making the salary adjustment). The General Accounting Office has reported that application of these requirements has caused an undue burden and confusion. GAO does not believe that Congressional intent was to subject routine pay adjustments to strict and burdensome requirements and recommended the law be changed.

New paragraph (6) provides that the same 10 year statute of limitation in force for administrative offsets applies to salary offsets for Federal employees.

Section 506—Use of Internal Revenue Service to locate delinquent debtors

Section 506 amends section 6103(m)(2)(A) of the Internal Revenue Code of 1954 to authorize the Internal Revenue Service to provide taxpayer information to agencies pursuing debt collection activities under authorities other than the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982 (subchapters I and II of chapter 37 of title 31).

The Federal Claims Collection Act allows agencies to redisclose taxpayer addresses to their employees and agents for the purpose of locating delinquent debtors. However, the Internal Revenue Service refuses to disclose addresses to agencies unless they cite the

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Federal Claims Collection Act as their collection authority and, on these grounds, had denied such access to the Farmers Home Administration, the Federal Deposit Insurance Corporation, and the Department of Navy's Judge Advocate General who cite other debt collection authority. For example, the Farmers Home Administration cites the Consolidated Farm and Rural Development, as amended, and the Housing Act of 1949, as amended, as its collection authority.

Section 507—Administrative offset

Section 507 amends section 3716(a) of title 31 to require that agencies collect debts owed to them by administrative offset, whenever feasible and in the Government's interests. Presently, section 3716(a) authorizes administrative offset but does not require agencies to do so.

Section 508—Budget statements and debt management reporting

Section 508 amends section 1105(a) of title 31 to require that each agency operating credit programs include as part of its budget submission a separate statement detailing the agency's compliance with and activities under subchapters I and II of chapter 37 and new chapter 38 of title 31. The Administrator for Financial Management is to prescribe the format of the statement and, in doing so, is to consider the information described in section 3719 of title 31.

Section 508 also amends section 3719(a) of title 31 to add new subparagraph (G) which expands reporting on debt collection activities by requiring that an agency report its progress in implementing the requirements of subchapters I and II of chapter 37 and new chapter 38 of title 31 and its goals (both monetary and programmatic) for improving collections and reducing delinquencies and debt writeoffs.

Title VI—Federal Information Policy

Sec. 601—Purpose

Section 601 amends subsections (3) and (5) of section 3501 stating the purposes of chapter 35 of title 44, United States Code, on coordination of Federal information policy. Subsection (3) is amended to show that this chapter is to apply to all stages of the Federal information process, not only information *collected*, but also information *maintained* and *disseminated*. Implementation to date has largely neglected information dissemination and given inadequate attention to information maintenance.

The amendment to subsection (5) clarifies congressional intent that this chapter applies to all information technologies. Implementation to date has focused primarily on mainframe computers and telecommunications systems. Many other information technologies, such as electronic mail, videoconferencing, and optical disks, have received less attention. The amended language also clarifies congressional intent that information technologies be used to improve the *quality of Federal decisionmaking*, among other purposes.

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Sec. 602—Definitions

Section 602 amends section 3502 of title 44 in two ways. The term "collection of information requirement" is included within the definition of "information collection request," and a new definition is provided for the term "information resources management."

The first change is needed to clarify the applicability of chapter 35 of title 44 to reporting and recordkeeping requirements contained in rules that were in effect at the time of the Paperwork Reduction Act's enactment. The Department of Justice, in a 1982 opinion, seized upon the term "collection of information requirement" in section 3504(h) to infer that such requirements were to be completely distinguished from "information collection requests," the term generally used in the rest of the Act. "Collection of information requirements" should be construed instead as a subset of "information collection requests," circumscribed by the provisions of section 3504(h) when they appear in proposed rules, but otherwise subject to the Act's requirements for all "requests."

Section 3504(h) originated as part of a Kennedy amendment in the Senate and was intended to provide procedural safeguards to prevent OMB from overturning a proposed agency rule without justifying its decision publicly. Unless OMB participates in the rulemaking by filing public comments, section 3504(h) prevents it from disapproving any "collection of information requirement" contained in the rule, except in the circumstances set out in section 3504(h)(5). Nowhere was it suggested that the language of section 3504(h) was in any way to restrict the scope of OMB's review of reporting and recordkeeping requirements contained in rules not published for notice and comment. Adding the phrase "collection of information requirement" to the definition of the term "information collection request" ensures that the two terms are treated the same way under the Act except as provided in section 3504(h). This makes it clear, for example, that the public protection clause (section 3512), the three-year limit on OMB approvals (section 3507(d)), and the fast-track emergency clearance authority (section 3507(g)) apply to "collection of information requirements."

In light of this clarification, some members expressed concern when the Committee reported similar legislation (S. 2433) in the 98th Congress that agencies might seek to rescind a rule without engaging in a rulemaking by simply failing to resubmit a collection of information requirement for OMB review when the previous clearance expired. The Office of Information and Regulatory Affairs expressed the view that this is not now a problem and is unlikely to arise as a result of enactment of this provision. OMB's rule implementing the Act, at 5 CFR 1320.14(a), states that "previously approved collection of information subject to this section shall be submitted (to OMB) not later than 90 days before the expiration date the OMB control number of assigned to the collection." If an agency fails to resubmit a collection of information requirement after its clearance expires, the public protection clause of the Act would preclude the agency from penalizing persons who fail to respond to the collection of information requirement. However, the rule requiring the collection of information would remain in effect,

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and in the Committee's view the agency could be sued successfully for failing to enforce its own rules.

Put another way, the Paperwork Reduction Act should not be viewed as a means for agencies to rescind, amend, or otherwise undermine rules adopted after rulemaking under the Administrative Procedure Act. The Administrative Procedure Act requires an additional rulemaking in order for an agency to rescind or amend such a rate. If an agency does not intend to enforce a rule or intends to change its operation significantly by altering an important collection of information requirement, it should act to rescind or amend the rule in accordance with relevant law. If an agency fails to resubmit a collection of information requirement for OMB clearance when its previous clearance expires, the Committee expects that the OMB Director, acting through the Administrator of the Office of Information and Regulatory Affairs, would order the agency either to resubmit the collection of information requirement for OMB review, or initiate a rulemaking to rescind or amend the role, or both. Additionally, if, prior to the expiration of the requirement's previous clearance, the agency does not initiate the rulemaking or seek to extend the collection, or both, the Director should, pursuant to section 3514(a)(7), inform Congress that a violation of the Paperwork Reduction Act has taken place. Until that collection of information requirement receives OMB clearance or is rescinded pursuant to rulemaking, the public protection clause of the Paperwork Reduction Act would apply.

Section 602 of S. 2230 defines the term "information resources management" to clarify the term and to denote the wide scope which the term is meant to encompass. Management of the Federal Government's information resources includes all stages of information management and all types of information technology. The term "burden" is included in the definition to state explicitly that the management of information resources ecompasses more than just the direct use of information technology and labor resources by Federal agencies. Such management also includes planning and organizing for the efficient and coordinated collection, use and dissemination of information, and properly training employees to carry out such tasks.

The Committee chose to clarify this term in order to encourage Federal agences to better integrate the functions associated with information resources management. Because of traditional and longstanding organizational arrangements existing prior to enactment of the Act, the effective integration of information resources has often been resisted.

Sec. 603—Office of Information and Regulatory Affairs

Section 603 amends section 3503(b) of title 44 to provide that the Administrator of the Office of Information and Regulatory Affairs be appointed by the President, by and with the advice and consent of the Senate. The Paperwork Reduction Act of 1980 provided that the Administrator be appointed by the Director of OMB. This amendment strengthens congressional oversight of the Office and provides an opportunity for Congress and the executive branch to set a common agenda when a new Administrator takes over.

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This amendment does not require the nomination of the current Administrator to be confirmed by the Senate, but does require that of his successor to be so confirmed. Successor Administrators will also report to the Director through the Deputy Director for Management and Finance to ensure better coordination with other management functions of OMB.

Sec. 604—Authority and functions of Director

Sections 604 amends subsection 3504(a) of title 44 to add three areas to the scope of authority and functions of the OMB Director: the security of Federal records, the use of information technology to support and improve Federal decisionmaking, and the dissemination of Federal information. These three key information management areas were not specified in the original Federal Paperwork Act but have become increasingly important in recent years. In addition of information dissemination is consistent with the chage in purpose and the new definition of information resources management cited above.

Section 604 also amends subsection 3504(d) to strengthen the statistical policy and coordination functions of OMB, acting through the Office of Information and Regulatory Affairs. The amended subsection (d) directs that the statistical policy and coordination functions be integrated with the other information resources management functions and requires the appointment of a chief statistician who is a trained and experienced professional statistician.

The new subsection also gives OMB the following additional statutory responsibilities in the statistical policy and coordination area: periodic review and updating of the long-range statistical plans required by the Act; review of agency budget proposals to assure that they are consistent with such long-range plans; and development and implementation of government-wide policies, principles, standards, and guidelines concerning such statistical data sources as may be required for the administration of Federal programs.

The amendment to subsection 3504(d) also clarifies that the chief statistician is expected to carry out the functions described in that subsection of the Act, although the administrative responsibility, as delegated by the Director of OMB under section 3503(b) of the Act, continues to rest with the Administrator of the Office of Information and Regulatory Affairs.

Sec. 605—Assignment of tasks and deadlines

Section 605 amends section 3505 of title 44 to require that the five-year plan required by the Paperwork Reduction Act for meeting the automatic data processing, telecommunications, and other information techrology needs of the Federal Government be updated annually. The Committee amendment to this section is technical in nature, citing section 111 in addition to section 110 of the Federal Property and Administrative Services Act of 1949.

A new paragraph (4) in section 3505 requires OMB to set new goals for reducing the burden of Federally sponsored collection of information. The goal for the fiscal year ending September 30, 1987, must be at least five percent below the level existing on September 30, 1986, and additional five percent reductions must be sought in each of the next four fiscal years.

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The Paperwork Reduction Act required a 25-percent reduction of the paperwork inventory existing at the time of enactment. This provision resulted in OMB having to keep track for three years of what happened to the specific paperwork requirements that existed on the date of enactment. In contrast, this amendment requires OMB to seek a five percent cut in the inventory existing at the beginning of each fiscal year by the end of the same fiscal year.

A new paragraph (5) in section 3505 requires OMB, to maintain a comprehensive set of information resources management policies. Language in S. 2433, 98th Congress, would have required OMB to "develop and issue" a comprehensive set of such policies. In December 1985, OMB issued Circular No. A-130 which provides a general policy framework for management of Federal information resources. Therefore, this paragraph requires OMB to maintain this policy.

A new paragraph (6) in section 3505 requires OMB, within one year of the date of enactment, to report to the Congress on the feasibility and means of enhancing public access, including access by electronic media, to information collection requests. The Committee is concerned that public access is overly restricted by the difficulty of getting to and getting into OMB's public reading room. Access by a computer phone link, for example, would provide timely information of the status of particular information collection requests, improve public participation in the review process and increase the utility and effectiveness of the public protection clause of the Act.

The new paragraph (6) also requires that OMB identify, within one year of the date of enactment, further initiatives to reduce the reporting and recordkeeping burden associated with the administration of federal grant programs. As noted earlier, the Committee believes that substantial burdens created as a result of OMB's own management circulars are not being systematically reviewed for their reporting and recordkeeping impact. The Committee has seen numerous examples of paperwork requirements imposed on grant recipients that are clearly duplicative or lacking in practical utility, yet have escaped OMB review. These requirements impose an unnecessary burden not only on the recipients but also on the Government, which must incur substantial costs to review the paperwork, with little or no benefit derived.

Sec. 606—Federal agency responsibilities

Section 606 makes a technical amendment to section 3506(c)(1) to incorporate the newly defined term "information resources management." It also adds three new agency responsibilities:

implementation of applicable Government-wide and agency information resources management policies;

periodic evaluation and, as needed, improvement of the accuracy, completeness, and reliability of data and records contained in Federal information systems; and

development and annual revision of a agency five-year plan, in accordance with appropriate guidance provided by the OMB Director, for meeting the agency's information technology needs.

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These new responsibilities will strengthen the role of the agency information resources manager, provide more systematic planning for information technology acquisition and use, and better assure the quality of the data maintained in automated systems.

Sec. 607—Public information collection activities

Section 607 amends subparagraph 3507(a)(2)(b) of title 44 to set forth guidelines for the required Federal Register notices. The law now requires only that an agency must prepare a notice stating that it has submitted a proposed information collection request to OMB. Section 607 requires that the notice contain, at a minimum, a title for the information collection request, a brief description of the need for the information and its proposed use, a description of the likely respondents and the proposed frequency of response, and an estimate of the burden. The Committee emphasizes that this is the minimum amount of information that must be contained in such a notice. The purpose of the notice is to alert the public to the proposed request so that the public might provide comments to agencies and OMB during the review process. The Committee strongly encourages agencies to include any additional information in their notices that would enhance the quality and quantity of such public comments.

Sec. 608—Federal Information Locator System

This section amends subsection 3511(a) of title 44 to require that the Federal Information Locator System be designed so as to assist Federal agencies and the public in locating existing Government information. To date the emphasis has been on reducing or eliminating the unnecessary collection of information. This amendment will clarify that Congress also intends that the system facilitate the location of existing Government information for both Federal agencies and the public.

Sec. 609—Responsiveness to Congress

Subsection 609(a) amends section 3514 of title 44 to impose two new reporting requirements on OIRA dealing with information resources management and statistical policy. OMB is required by the Paperwork Reduction Act to report annually to the Congress on its major activities under the Act. This new subsection adds these two areas to the topics to be covered in the report.

A new paragraph (9) requires a summary of accomplishments and planned initiatives to improve Federal information resources management within agencies; a detailed statement with respect to each agency of new initiatives to acquire information technology to improve such management; and an analysis of the extent to which the policies, principles, standards, and guidelines maintained pursuant to section 3505(5) of title 44 promote or deter such new initiatives. Subsection 3505(6), as added by this legislation, requires OMB, within one year of the date of enactment of this legislation and in consultation with the Administrator of General Services, to issue principles, standards, and guidelines to implement such policies.

A new paragraph (10) requires that, with respect to the statistical policy and coordination functions assigned by section 3504(d) of

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title 44, the annual report include: a description of the specific actions taken, or planned to be taken, to carry out each such function; and a description of the status of each major Federal statistical program, including information on any improvements in such programs, information on any programs that have been reduced or eliminated, and information on the previous, present, and proposed budgets for each such program. The Committee amendment also requires that the report include a description and summary of the long-range plans required by paragraph 3504(d)(1) and currently in effect for the major Federal statistical activities and programs.

Subsection 609(b) amends section 3514 of title 44 to require OMB to report annually, at the time the President submits the Federal budget to the Congress, on how the funds requested in the budget will be spent on the following functions: paperwork and regulatory review; general information policy, records management, and privacy and Federal disclosure policy; statistical policy; automatic data processing and telecommunications policy; and administrative and other functions. The report should also include a description of the allocation of the funds available to OIRA for those functions in the preceding fiscal year—that is, the fiscal year in progress at the time the budget is submitted.

The amendment to this section requires that this report be made at the time of the budget submission so as to provide needed information to the authorizing and appropriating committees on OIRA's fiscal needs for the coming year. The Committee does not intend to require that this report be made separately. It may be made in conjunction with the annual report required by section 3514 or the President's management report required by section 1115 of title 31 (as added by title I of S. 2230); it may be made in conjunction with the information collection budget: or all may be combined.

It is the Committee's view that the implementation of the Paperwork Reduction Act would have occurred more quickly and smoothly if OMB had assigned the resources to OIRA originally authorized by the Act. The Committee expects that the information contained in the budgetary report required by this legislation will enable the appropriations committees to direct sufficient resources to OIRA to fully implement the Act and these amendments.

Sec. 610—Authorization of appropriations

Section 610 replaces section 3520 of the Paperwork Reduction Act with a new section authorizing $9 billion to carry out the provisions of this chapter in the 1987 fiscal year; $9.5 million in 1988; $10 million in 1989; and $10.5 million in 1990—a four-year total of $39 million. OMB has only spent about $5 million for OIRA in fiscal years 1985 and 1986, but the Committee recommends authorizing this higher level of appropriations in the belief that such sums would enable OMB to implement the Act and these amendments more adequately.

Sec. 611—Information Technology Fund

Section 611 amends sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757 and 759) to combine the existing automatic data processing fund and Federal telecommunications fund into consolidated Information Technology

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Fund to be administered by the Administrator of General Services. Such a consolidation would eliminate the increasingly artificial distinction between these two merging technologies and would provide government managers with the flexibility to take advantage of the most cost-effective procurement opportunities for certain information resources. The Administrator would develop plans for the cost and capital requirements of the Fund for each fiscal year, and subject to OMB's approval, would establish rates to be charged agencies that are provided information technology resources through the Fund. This would permit reimbursements to the Fund to be coordinated with the capital requirements of the Fund so that the Fund can be kept stable.

Section 611 also authorizes the GSA Administrator to enter into multiyear contracts for periods of up to five years, provided that such procurements are fully competitive, yield substantial cost savings, and do not exclude small business participation; and provided that funds are available and adequate for the payment of the costs of such contracts for the first fiscal year, as well as any costs of cancellation or termination. This provision would allow GSA to consider a third procurement alternative—a multiyear lease—in addition to lease and purchase.

The automatic data processing fund was authorized in 1965 to finance, on a reimbursable basis, the economic and efficient purchase, lease, and maintenance of automatic data processing equipment by Federal agencies. The fund was activated in 1968 with an initial capitalization of $10 million and augmented by an appropriation of $20 million three years later.

The Federal telecommunications fund was authorized in 1962 to finance, on a reimbursable basis, the services and equipment necessary for the operation of a Federal telecommunications system (FTS). The initial capital of $9 million, provided in 1963, was increased by appropriations of $20 million in 1977, $5 million in 1930, and $2.5 million in 1981.

Also included are minor amendments which are technical in nature. They correct a typographical error in a legal citation and make clear that OMB must approve the level of uncommitted funds that may be retained in the Fund at the end of each fiscal year.

Subsection 611(b) makes technical amendments in section 111 of the Federal Property and Administrative Services Act of 1949 and in section 3504(g) of title 44 and section 3(b) of the Paperwork Reduction Act to reflect the consolidation of the two funds.

Sec. 612—Employees for Office of Information and Regulatory Affairs

Section 612 authorizes the Director of OMB to hire staff as necessary for OIRA to carry out its responsibilities under the Act. The Director may employ up to 20 persons without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, when it is not practicable to examine applicants for such positions pursuant to section 3304 of title 5, as long as the positions involved are not of a confidential or policy-determining character. This section would allow OIRA to hire up to 20

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persons under the Schedule A authority but would not permit additional hiring for Schedule C positions.

Such hiring authority is not very exceptional. Many other agencies have similar statutory authority. This authority would permit the Director to hire without regard to the normal—and often time-consuming—competitive examination process a limited number of uniquely qualified professionals who have expertise not readily available and who must be hired quickly.

OIRA has had similar authority on a temporary basis for these reasons under the original Federal Paperwork Act. The need continues for this limited form of exceptional hiring. Such staff would not be members of the career-competitive service, and thus not protected by the government's merit staffing procedures. This authority would not permit hiring of Schedule C employees.

OIRA should, whenever possible, continue to fill its positions under the competitive examination process. This excepted authority will help to assure full and adequate staffing of the Office of Information and Regulatory Affairs so that the goals of the Paperwork Reduction Act are met.

Sec. 613—Effective date

Section 613 provides that title VI would become effective on the date of enactment, except that the provisions of section 611, pertaining to the Information Technology Fund, would not take effect until January 1, 1987. The Committee intends thereby to provide for a transition period between the end of the 1986 fiscal year and the time when the automatic data processing fund and the Federal telecommunications fund are merged.

VIII. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 1986.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared attached cost estimate for S. 2230, the Federal Management Reorganization and Cost Control Act of 1986.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes.

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2230.

2. Bill title: Federal Management Reorganization and Cost Control Act of 1986.

3. Bill status: As ordered reported by the Senate Committee on Governmental Affairs, June 25, 1986.

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4. Bill purpose: Title I of the bill would create an Office of Financial Management (OFM) and several senior positions at the Office of Management and Budget (OMB) for the purpose of increasing emphasis on federal management and finance. In addition, Title I authorizes the appropriation of $2 million for a temporary commission to study and recommend the best institutional arrangement in the Executive Office of the President for managing federal financial systems. The Administrator of OFM would prepare a five-year management plan, with annual revisions thereafter, that must be reviewed annually by the General Accounting Office (GAO). The bill also would establish controller functions at 21 agencies and a Federal Financial Management Council to make recommendations regarding the management plan. Title I would require the Administrator of the Office of Information and Regulatory Affairs (OIRA) to prepare an estimate of the cost to state and local governments of implementing proposed federal agency regulations expected to cost more than $100 million.

Title II would require agencies' accounting and internal control systems to comply with current standards within five years after enactment of the bill. If, after three years, an agency is not in compliance, OFM would be authorized to require the agency to use any available funds for expenses necessary to reach compliance.

Title III directs agencies and government corporations to prepare annual financial statements that would be audited biennially beginning in 1990.

Title IV authorizes the Secretary of the Treasury to fine any agency that does not comply with requirements for timely disbursement of federal funds. Under current law, an agency is charged an interest penalty by the payee when it pays its bills late, and OMB has directed in Circular A-125 that agencies pay their bills on time. Title IV would allow the Secretary to collect a penalty as well when an agency pays its bills either early or late and to deposit the fine in a Cash Management Improvement Fund, which would be expended on efforts to improve cash management in the federal government. Title IV also authorizes the Secretary to issue regulations that would require a state to pay interest on federal grant funds it receives before checks for the grant-related activites are cashed. The federal government would also be required to pay interest to a state that had to disburse its own funds before receiving a tardy federal grant payment. Finally, Title IV would require the Secretary to study and prescribe criteria to be used by agencies in determining whether to establish a payment procedure called a lockbox system. A lockbox is a rental box at a central post office to which federal receipts are directed and which is serviced by a commercial bank under contract with the federal government.

Title V is aimed at strengthening federal credit program management. The bill mandates organizational and procedural changes intended to improve management of credit programs. Each federal agency would be required to prepare comprehensive credit management and debt collection plans and submit them to the Administrator of OFM. The bill also requires the Administrator to establish federal credit management policies and implement those policies through regulations. The purpose of those regulations should be to

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conform federal credit practices with the best established practices of the private sector.

Title V makes changes in current law that affect collection of debt. Agencies would be required to identify collection targets and delinquency and default rate standards for all agency credit programs, based on guidelines set by the Administrator of OFM. This bill would require agencies to use credit bureaus and private collection agencies for federal government debtors who are delinquent in their payment. Agencies would also have to collect a claim by administrative offset, whenever it is feasible and in the interest of the federal government. Finally, Title V requires agencies to implement these requirements within one year after enactment of the bill and to report annually on compliance with the requirement.

Title VI would amend existing law to clarify federal information policies and to consolidate the Automated Data Processing Fund and the Federal Telecommunications Fund in the General Services Administration. In addition, this title authorizes appropriations for OIRA for fiscal years 1987 through 1990.

5. Estimated cost to the Federal Government: The largest potential impact of S. 2230 would arise from the provisions affecting management of federal agencies' credit and debt programs and financial systems. Most of the activities required by such provisions are already authorized under current law and are required by several OMB directives. Because agencies are in various stages of complying with these existing requirements, there is no clear basis for determining whether the further Congressional requirements in this bill would result in more vigorous or accelerated compliance by agencies. In testimony and several reports, GAO has stated its support for many of the management improvements mandated by the bill and has indicated that increased Congressional oversight of these areas will, over the long term, lead to widespread implementation by agencies and savings to the federal government. CBO believes that some savings are likely, but cannot estimate the amount of such savings.

The bill includes some authorizations and other specific requirements for which the budget impact can be estimated. These are shown in the following table.

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Title I:					
Estimated authorization level	2.5	0.6	0.6	0.6	0.6
Estimated outlays	2.3	0.7	0.6	0.6	0.6
Title IV—Federal-State Interest Payments:					
Estimated budget authority	−50.0	−50.0	−50.0	−50.0	−50.0
Estimated outlays	−50.0	−50.0	−50.0	−50.0	−50.0
Title VI—OIRA:					
Authorization level	9.0	9.5	10.0	10.5	
Estimated outlays	8.0	9.5	10.0	10.5	1.0
Net effect of estimated items:					
Estimated authorization level/budget authority	−38.5	−39.9	−39.4	−38.9	−49.4
Estimated outlays	−39.7	−39.8	−39.4	−38.9	−48.4

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The impact of this bill falls within various budget functions.

Basis of estimate: For the authorization provisions of S. 2230, this estimate assumes that the amounts authorized will be appropriated. Estimated outlays are based on historical spending patterns. Other provisions of the bill are discussed below.

Title I. The bill would establish a Congressional requirement for OIRA to prepare state and local cost estimates for federal regulations. Under Executive Order 12291, which is currently in effect, OIRA requires agencies to study the costs and benefits of proposed federal regulations, including the costs to state and local governments. To the extent that agencies do not already isolate and report on the costs to state and local governments of implementing federal regulations, we expect that significant additional resources would be necessary for agencies to fully comply with this requirement and for OIRA to report on the methodology it uses for such estimates. However, CBO does not have sufficient information to estimate the amount of necessary resources.

Title IV. Based on information from the Department of the Treasury, we estimate that states would be required to pay the federal government about $50 million of interest on federal grant funds per year in excess of the interest the federal government would have to pay the states. Regarding the provision allowing the Secretary of the Treasury to collect penalties from agencies that pay their bills early or late, the potential savings would result from a possible decrease in the early payment of bills. Although OMB's Management report for 1987 states that agencies have paid more than 99 percent of their bills on time, CBO does not have sufficient information on the extent of early payments or on the potential impact of the penalties to estimate the savings from this provision.

Title V. The savings from the proposed changes in credit management are potentially significant, but cannot be estimated by CBO. In fiscal year 1985, the agencies of the federal government made about $64 billion in direct loans and $55 billion in primary guaranteed loans. During that same year, about $750 million of defaulted direct loans were written off and about $6.1 billion in loan guarantees were terminated. It is clear from the magnitude of the amounts involved that, even if only a small percentage decrease in loan losses were achieved through the implementation of the provisions of this title, the savings would be significant.

CBO estimates that the provision of the bill affecting debt collection would not result in significant additional savings relative to current law. Most of the debt collection provisions are already authorized under current law, including use of credit bureaus, private collection agencies, administrative offsets, and Internal Revenue Service (IRS) address lists. Further, OMB circular A–129 requires federal agencies to use these and other debt collection tools to improve the recovery of funds owed to the federal government. S. 2230 reinforces with Congressional requirements those practices already authorized and required under current law—practices that are in the process of being implemented by agencies. In a recent report (May 1986), however, GAO states that some agencies have not yet made full use of existing debt collection authority. GAO believes that management techniques which are supported by legislation, while not a guarantee of success, have the greatest likelihood

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of full agency implementation. While the bill probably would result in somewhat more aggressive and effective implementation of these tools over the long term, CBO cannot estimate additional savings on an annual basis, because the bill's requirements still allow agencies flexibility similar to what they have now in implementing the debt management tools.

An illustration based on the Department of Education's extensive experience with using private collection agencies shows the potential effect of widespread implementation of such a collection tool. GAO states that "a large portion" of delinquent debt "may never be collected" (GAO/AFMD–86–39, May 1986). If, for example, federal agencies were to contract with private collectors to recover half of the $24 billion in outstanding, delinquent non-tax debt, about $12 billion would be subject to collection in this way. If collectors have the average success rate of 2.5 percent per year that the Department of Education had between 1981 and 1985, but keep 30 percent of the amount collected for commissions, then federal agencies could reap a total of about $200 million per year in recovered debt. However, the Department of Education has already collected $100 million over the 1981–1985 period with this method, and other agencies have also been using or are beginning to use this method even without the requirements of S. 2230.

Regarding some of the specific requirements, those agencies that are not already reporting delinquent debtors would have to expand additional resources to generate the information for credit bureau reporting. although no direct savings would result. On the other hand, agencies that currently perform collection actions in-house might realize some savings upon contracting out to private collection agencies because the costs would be born by commissions on the recovered debt rather than salaries paid to federal employees.

Other provisions of the bill are not expected to result in significant costs or savings.

6. Estimated cost to State and local governments: CBO estimates that the provision in Title IV requiring the federal government and state governments to pay interest on federal grant funds would result in a net cost to state governments of about $50 million per year.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: James Hearn and Paul DiNardo.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

IX. REGULATORY IMPACT

Rule 26.11b of the Standing Rules of the Senate requires the report accompanying each bill or joint resolution of a public character to contain an evaluation of the regulatory impact of the legislation. The evaluation must include the four elements listed below.

1. An estimate of the numbers of individuals and businesses who would be regulated and a determination of the groups and classes of such individuals and businesses. S. 2230 would not result in any additional regulation of individuals and businesses.

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2. A determination of the economic impact of such regulation on the individuals, consumers, and businesses affected. Not applicable.

3. A determination of the impact on the personal privacy of the individual affected. Not applicable.

4. A determination to the amount of additional paperwork that will result from the regulations to be promulgated pursuant to the legislation, including estimates of the amount of time and financial cost required of affected parties, as well as reasonable estimates of the recordkeeping requirements that may be associated with the legislation. Essentially no additional paperwork is imposed upon the public by S. 2230. Title V does require the development of notice of debt collection policies and practices which is to be signed by recipients of federal loan and loan guarantees as an acknowledgement that they are aware of the conditions of the Federal credit assistance. Achievement of the goals set out in title VI of S. 2230 would result in the elimination of at least 500 million hours of annual paperwork burden by September 30, 1990. S. 2230 imposes additional reporting requirements on the Office of Management and Budget which may be consolidated with existing reporting requirements without substantial burden or, in the case of agency financial statements required by title III of the bill, should not represent a substantial burden.

X. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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PART III—EMPLOYEES

Subpart D—Pay and Allowances

* * * * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

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Solicitor General of the United States.
Under Secretary of Commerce, Under Secretary of Commerce for Economic Affairs, and Under Secretary of Commerce for Travel and Tourism.
Under Secretary of Education.
Under Secretary of Health and Human Services.
Under Secretary of the Interior.
Under Secretary of Labor.
Under Secretary of State for Political Affairs and Under Secretary of State for Economic and Agricultural Affairs and an Under Secretary of State for Coordinating Security Assistance Programs and Under Secretary of State for Management.
Counselor of the Department of State.
Under Secretary of the Treasury (or Counselor).
Under Secretary of the Treasury for Monetary Affairs.
Administrator of General Services.
Administrator of the Small Business Administration.
Deputy Administrator of Veterans' Affairs.
Deputy Administrator, Agency for International Development.
Chairman of the Merit Systems Protection Board.
Chairman, Federal Communications Commission.
Chairman, Board of Directors, Federal Deposit Insurance Corporation.
Chairman of the Federal Home Loan Bank Board.
Chairman, Federal Energy Regulatory Commission.
Chairman, Federal Trade Commission.
Chairman, Interstate Commerce Commission.
Chairman, National Labor Relations Board.
Chairman, Securities and Exchange Commission.
Chairman, Board of Directors of the Tennessee Valley Authority.
Chairman, National Mediation Board.
Chairman, Railroad Retirement Board.
Chairman, Federal Maritime Commission.
Comptroller of the Currency.
Commissioner of Internal Revenue.
Under Secretaries of Defense (2).
Deputy Administrator of the National Aeronautics and Space Administration.
[Deputy Director of the Office of Management and Budget.]
Executive Deputy Director, Office of Management and Budget.
Deputy Director for Management and Finance, Office of Management and Budget.
Deputy Director for Budget, Office of Management and Budget.

* * * * * * *

§ 5315. Positions at level IV

Level IV of the Executives Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate de-

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termined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

* * * * * * *

Administrator for Financial Management, Office of Management and Budget.

* * * * * * *

CHAPTER 55—PAY ADMINISTRATION

* * * * * * *

Subchapter II—Withholding Pay

* * * * * * *

§ 5514. Installment deduction for indebtedness to the United States

(a)(1) * * *

(5) This subsection does not apply to intragency deductions for routine administrative overpayments which are the result of clerical or administrative error or delays in the processing of pay documents and which are rarely controversial or disputed, with respect to these routine adjustments of pay, the agency should afford the individual reasonable opportunity to dispute the deduction. Such opportunity need not be provided prior to making the deduction, and shall not be provided prior to making the deduction if the debtor's employment is about to terminate.

(6) No claim may be collected under the authority of paragraph (1) of this subsection more than 10 years after it first accrues.

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UNITED STATES CODE

TITLE 31—MONEY AND FINANCE

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CHAPTER 5—OFFICE OF MANAGEMENT AND BUDGET

Subchapter I—Organization

Sec.
501. Office of Management and Budget.
502. Officers.
503. Office of Information and Regulatory Affairs.
504. Office of Federal Procurement Policy.
505. Functions of the Deputy Director for Management and Finance.
506. Functions of the Deputy Director for Budget.
507. Definition.

[Subchapter II—Administrative]

508. [521.] Employees.
509. [522.] Necessary Expenditures.

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Subchapter II—Office of Financial Management

511. Office of Financial Management.
512. Administrator for Financial Management.
513. Functions of the Director and the Administrator for Financial Management.
514. Regulations.

Subchapter III—Agency Controller Functions

521. Designation of officials.
522. Functions.
523. Federal Financial Management Council.

Subchapter I—Organization

§ 501. Office of Management and Budget

The Office of Management and Budget is an office in the Executive Office of the President.

§ 502. Officers

(a) The head of the Office of Management and Budget is the Director of the Office of Management and Budget. The Director is appointed by the President, by and with the advice and consent of the Senate. Under the direction of the President, the Director shall administer the Office.

[(b) The Office has a Deputy Director of the Office of Management and Budget, appointed by the President, by and with the advice and consent of the Senate. The Deputy Director—

[(1) shall carry out the duties and powers prescribed by the Director; and

[(2) acts as the Director when the Director is absent or unable to serve or when the office of Director is vacant.]

(b)(1) The Office has an Executive Deputy Director, who shall carry out such functions as the Director may prescribe. The Executive Deputy Director acts as the Director when the Director is absent or unable to serve or when the office of Director is vacant.

(2) The Office has a Deputy Director for Management and Finance, who shall perform the functions prescribed by section 505 of this title and who shall carry out such additional functions as the Director may prescribe.

(3) The Office has a Deputy Director for Budget, who shall perform the functions prescribed by section 506 of this title and who shall carry out such additional functions as the Director may prescribe.

(4) The Director shall prescribe the order in which the Deputy Directors specified in paragraphs (2) and (3) of this subsection shall act for the Director when the Director and the Executive Deputy Director are absent or unable to serve or when the offices of Director and Executive Deputy Director are vacant.

(c) The Office has 3 Assistant Directors who shall carry out the duties and powers prescribed by the Director.

(d) The Office may have not more than [6] *8* additional officers, each of whom is appointed in the competitive service by the Director, with the approval of the President. Each additional officer shall carry out the duties and powers prescribed by the Director. The Director shall specify the title of each additional officer.

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(e) When the Director and Deputy Director are absent or unable to serve or when the offices of Director and Deputy Director are vacant, the President may designate an officer of the Office to act as Director.

§ 503. Office of Information and Regulatory Affairs

(a) The Office of Information and Regulatory Affairs, established under section 3503 of title 44, is an office in the Office of Management and Budget.

(b)(1) The Administrator of the Office of Information and Regulatory Affairs shall, to the extent practicable, prepare for each regulation proposed by an executive agency which the Director determines in a significant regulation, a statement specifying—

(A) an estimate of the costs which would be incurred by State and local governments in carrying out or complying with such regulation in the fiscal year in which such regulation is to become effective and in each of the four fiscal years following such fiscal year; and

(B) the basis for each such estimate.

(2) The Administrator of the Office of Information and Regulatory Affairs shall, notwithstanding any other provision of law, cause any regulation for which a statement is prepared under paragraph (1) of this subsection to be published in the Federal Register, together with such statement.

(3) Within one year after the date of enactment of this chapter, the Administrator of the Office of Information and Regulatory Affairs shall submit a report to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives which—

(A) defines and identifies the methodologies used for the purposes of estimating the costs that will be incurred by State and local governments in carrying out or complying with significant regulations; and

(B) contains examples of the statements prepared under paragraph (1) of this subsection for significant regulations during the one-year period prior to the date on which such report is made.

(4) For purposes of this subsection:

(A) The term "local government" has the same meaning as in section 6501(6) of this title.

(B) The term "regulation" means the whole or a part of an agency statement of general or particular applicability and future effect which applies to State and local governments and which is designed to implement, interpret, or prescribe law or policy or which describes the organization, procedure, or practice requirements of an agency. Such term does not include the adjudication of the result or obligations of individual parties.

(C) The term "significant regulation" means any regulation which in the judgment of the Director is likely to result in an annual cost to State and local governments of $100,000,000 or more, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government.

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§ 504. Office of Federal Procurement Policy

The Office of Federal Procurement Policy, established under section 5(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 404(a)), is an office in the Office of Management and Budget.

§ 505. Functions of the Deputy Director for Management and Finance

(a) The Director shall carry out through the Deputy Director for Management and Finance—

(1) all functions of the Director, and all functions delegated by the President to the Director, which relate to—

(A) providing overall leadership in the development and implementation of Federal management policies and in the coordination of programs to improve the quality and performance of managerial personnel;

(B) assisting the President in carrying out the responsibilities of the President as Chief Executive Officer of the Government;

(C) providing central policy direction and leadership in general management and managerial systems, financial management, procurement policy, grants and contracts management, information and statistical policy, regulatory affairs, property management, and in other management functions, including organizational planning and analysis and human resources management;

(D) informing Congress and the public concerning the state of Federal management and concerning imperatives for more effective management;

(E) facilitating actions by Congress and the executive branch to improve Government operations and to remove impediments to effective administration;

(F) providing leadership in management innovation through experimentation, testing, and demonstration programs, and through the adoption of modern management concepts and technologies;

(G) maintaining continuous oversight of the organizational structures and managerial systems and processes of the Government, and recommending changes in such structures, systems, and processes;

(H) promulgating goals to, and assisting in the development and implementation of plans to, improve the productivity of government personnel;

(I) advising the President on the requirements for providing executive leadership for the executive branch; and

(J) working with State and local governments to strengthen the Federal system and provide assistance to such governments with respect to intergovernmental programs and cooperative arrangements;

(2) the general management improvement and evaluation functions specified in subsection (b) of this section;

(3) the human resources management functions specified in subsection (c) of this section;

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(4) the productivity improvement functions specified in subsection (d) of this section;

(5) the organization and coordination functions specified in subsection (e) of this section;

(6) the functions specified in subsection (f) of this section; and

(7) the functions of the President under section 1111 of this title (other than functions under paragraph (1)(B) of such section) which are delegated to the Director.

(b) The general management improvement and evaluation functions of the Director referred to in paragraph (2) of subsection (a) include—

(1) the periodic assessment of the management performance of executive agencies, and the provision of recommendations to agency heads and to the President on needed corrections and improvements;

(2) the conduct, in cooperation with executive agencies, of management research, systems development, and demonstration projects, and the provision of assistance to executive agencies in establishing new programs and organizations;

(3) the provision of guidance and assistance to executive agencies in developing common automated systems to provide the President and the agency heads with timely, compatible, and accurate management information; and

(4) the establishment of uniform policies, guidelines, definitions, and reporting requirements for the evaluation of Federal programs and activities.

(c) The human resources management functions of the Director referred to in paragraph (3) of subsection (a) include—

(1) advising the President on the managerial requirements of executive agency positions to which Presidential appointments are made and on managerial qualifications of potential nominees to such positions;

(2) reporting to the President on pay and benefit levels for executive level positions in the Federal Government which are appropriate to recruiting and retaining highly qualified administrators and managers (other than pay and benefit levels for financial management positions);

(3) advising the Director of the Office of Personnel Management and executive agencies on the development of planning systems for effective workforce management and on the improvement of the quality and availability of data on human resource activities of the Government; and

(4) developing, in coordination with the Administrator for Financial Management and the Director of the Office of Personnel Management, Governmentwide policies for pay, benefits, and labor-management relations, and for integrated personnel and payroll systems which meet categorical needs while responding to the circumstances of individual agencies.

(d) The productivity improvement functions of the Director referred to in paragraph (4) of subsection (a) include—

(1) developing and promulgating goals, principles, guidelines, and standards for the administration of an effective productivity improvement program for the executive agencies;

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(2) identifying and proposing the elimination of statutory barriers that inhibit opportunities to make improvements in productivity;

(3) developing, in consultation with the executive agencies, organizational performance standards for those common Government and common agency functions that are appropriate targets for improved quality, timeliness, and efficiency;

(4) assisting in the development of a productivity improvement plan for each executive agency, and reviewing each executive agency's productivity plan, based upon the requirements and guidance issued pursuant to this section; and

(5) reporting annually to the Congress, in the management report submitted by the President under section 1115 of this title, on the state of productivity plans and accomplishments of the executive agencies and the Government as a whole.

(e) The organization and coordination functions of the Director referred to in paragraph (5) of subsection (a) include—

(1) continually reviewing the organizational structure of the Government, periodically reporting to the President on Government organization and on proposals to improve the performance and efficiency of Federal programs;

(2) monitoring the overall operations and management of Government corporations and other Government-sponsored enterprises;

(3) monitoring interagency cooperation in the field, and assisting in developing effective coordinating mechanisms throughout the Government;

(4) monitoring intergovernmental administration, and grants management systems and techniques;

(5) monitoring Government policies on (A) privatization of Government programs, services, and facilities, (B) administration of contracts between Government agencies and private parties, and (C) other relationships between the Government and the private sector; and

(6) overseeing Government travel and travel services management.

(f) The Director shall provide assistance in developing the President's legislative program by reviewing the provisions of all agency proposals for legislation, and all provisions of agency reactions to proposed legislation, which relate to the organization and management of the Government.

(g) The Administrator for Federal Procurement Policy, the Administrator of the Office of Information and Regulatory Affairs, and the Administrator for Financial Management shall report to the Director through, and be under the general supervision of, the Deputy Director for Management and Finance.

§ 506. Functions of the Deputy Director for Budget

The Director shall carry out through the Deputy Director for Budget—

(1) all functions of the Director under chapter 11 of this title; and

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(2) all functions of the President under chapter 11 of this title which are delegated to the Director, other than the functions described in section 505(a)(7) of this title.

§ 507. Definition

For purposes of this chapter, the term "financial management" means all systems, controls, policies, and procedures of an executive agency which—

(1) plan, account for, document, and report on financial performance and control of resources; and

(2) promote economical and efficient use of financial resources such as financial planning, budget execution, accounting, financial information systems development and maintenance, financial analysis, debt and credit management, cash management and analysis, inventory and property management, and financial reporting.

§[521.] *508.* Employees

The Director of the Office of Management and Budget shall appoint and fix the pay of employees of the Office under regulations prescribed by the President.

§[522.] *509.* Necessary expenditures

The Director of the Office of Management and Budget may make necessary expenditures for the Office under regulations prescribed by the President.

Subchapter II—Office of Financial Management

§ 511. Office of Financial Management

The Office of Financial Management is an office in the Office of Management and Budget.

§ 512. Administrator for Financial Management

(a) The head of the Office of Financial Management is the Administrator for Financial Management. The Administrator shall report to the Director through the Deputy Director for Management and Finance. The Administrator is appointed by the President, by and with the advice and consent of the Senate, and shall be an individual of high personal integrity with demonstrated ability in accounting, budget execution, financial and management analysis, auditing, systems development and implementation, financial reporting, and public administration.

(b) The Administrator shall be the principal advisor to the Director and the Deputy Director for Management and Finance with respect to Federal financial management policy.

§ 513. Functions of the Director and the Administrator for Financial Management

(a) The Director, through the Deputy Director for Management and Finance and the Administrator for Financial Management, shall—

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(1) provide central policy leadership, direction, and guidance for, and monitoring of, the Government's financial management systems;

(2) advise the President, the Congress, and agency heads on financial management matters and on the status of financial management in the Government;

(3) establish policies for agencies, in conjunction with the Secretary of the Treasury and in consultation with the Comptroller General, and provide guidance for agencies, relating to financial management matters, including—

(A) policies prescribing the overall objectives, structure, and information requirements for the financial management systems of the Government;

(B) accounting policies and procedures which implement the accounting principles, standards, and requirements prescribed under section 3511 of this title;

(C) policies and procedures for the design and implementation of new or enhanced financial management systems;

(D) policies and procedures to implement the internal control standards required by law;

(E) policies and procedures for asset management to be followed by all agencies, including cash management, credit management, debt collection, and inventory and property management and control; and

(F) policies and procedures for financial reporting which conform with the accounting principles, standards, and requirements prescribed under section 3511 of this title;

(4) provide guidance on, and monitor agency efforts to implement, sound internal control systems as required under subsections (b) and (c) of section 3512 of this title;

(5) develop and annually revise the five-year financial management plan required by subsection (d) of this section;

(6) coordinate and monitor the activities and operations of the agency officials designated under subchapter III of this chapter in order to ensure that—

(A) such officials comply with—

(i) policies and procedures established by the Director;

(ii) accounting principles, standards, and requirements prescribed under section 3511 of this title and internal control standards prescribed under section 3512 of this title; and

(iii) all provisions of law governing financial management;

(B) adequate financial management systems have been established in agencies and are operating effectively; and

(C) such systems and controls meet the needs of agency managers for internal controls and financial information;

(7) review agency financial management plans and policies in order to assure that—

(A) such plans and policies are—

(i) consistent with the overall objectives, structure, and information requirements of Government financial

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management systems established under paragraph (4)(A) of this subsection; and

(ii) applied uniformly across the agencies to assure parity and consistency; and

(B) in the case of any project for the development of new or improved financial management systems, such project does not duplicate efforts by other agencies;

(8) provide guidance to the Director of the Office of Personnel Management in the development and implementation of—

(A) personnel qualifications and job descriptions for all executive agency financial management positions; and

(B) professional development and training programs,

in order to ensure that qualified, trained personnel carry out Federal financial management functions; and

(9) provide advice to agency heads with respect to the selection of agency officials designated under subchapter III of this chapter in order to help ensure the relevance of the background, experience, and capabilities of such officials to carry out the functions specified in such subchapter.

(b) The Administrator for Financial Management shall—

(1) review agency budget requests for financial management, and advise the Director on the financial resources required to effectively operate and maintain the Government's financial management systems and to correct any major deficiencies in such systems;

(2) review agency financial management systems in order to assure that the development and enhancement of such systems comply with approved agency financial management plans and are effectively carried out;

(3) encourage and coordinate interagency projects to design and implement financial management systems that can be used by more than one agency in order to reduce the number of systems, eliminate duplication, and foster parity and consistency; and

(4) facilitate the exchange of information between agencies on financial management systems and efforts to improve such systems.

(c) Within one year after the date of enactment of this section, the Director shall prepare and transmit to the Congress a statement of objectives for the financial management activities of the Federal Government. The objectives contained in such statement shall—

(1) be consistent with the financial and accounting principles, standards, and requirements prescribed under section 3511 of this title;

(2) identify and address the major accounting and financial management needs of the Federal Government;

(3) identify and address executive agency and Government-wide needs for reporting of financial information and provide for complete disclosure of the financial condition of the Government; and

(4) describe and reflect the relationship between planning, budgeting, and accounting.

(d)(1) Within one year after the date of enactment of this section, the Director shall prepare and transmit to the Congress a five-year

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plan for the financial management activities of the Federal Government. The plan shall provide for:

(A) The strengthening of accounting, auditing, and financial reporting to ensure that complete, reliable, consistent, and timely financial information is available throughout the Government on a uniform basis and to ensure that such information meets the needs of agency management.

(B) The development of reliable cost and performance information in order to enable the accurate and complete calculation of the costs of program results and alternatives based on accounting information from the financial management system and to enable the establishment of user fees for Government services based on the actual cost of providing such services.

(C) The integration of accounting and budgeting systems in order to enable the use, in the budget formulation and execution processes, of accounting information and actual budget data for the most recently completed fiscal year which is obtained from the accounting systems.

(D) The integration of the Government's financial management systems in a manner which will minimize duplication and encourage executive agencies to use systems to jointly, thereby reducing the number of systems.

(E) The establishment of internal controls for financial management systems which are designed to ensure compliance with the objectives of subsections (b) and (c) of section 3512 of this title.

(2) The Director shall annually revise the plan required by paragraph (1) of this subsection and shall transmit the revised plan to the Congress.

(3) Within 60 days after the Director has submitted to the Congress a plan under paragraph (1) or (2) of this subsection, the Comptroller General shall prepare and transmit to the Congress a report which contains the analysis and comments of the Comptroller General with respect to the plan and the progress being made by agencies to strengthen financial management.

§ 514. Regulations

In the exercise of functions under this subchapter, the Director and the Administrator for Financial Management shall be subject to subsections (b), (c), and (d) of section 553 of title 5, notwithstanding subsection (a) of such section.

Subchapter III—Agency Controller Functions

§ 521. Designation of officials

(a) The head of each executive agency specified in subsection (b), shall, after consultation with the Director, designate an official of the agency who is compensated under the Exective Schedule contained in subchapter II of chapter 53 of title 5 to carry out the functions specified in section 522 fo this title.

(b) The agencies referred to in subsection (a) of this section are:

(1) The Department of Agriculture.

(2) The Department of Commerce.

(3) The Department of Defense.

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(4) The Department of Education.
(5) The Department of Energy.
(6) The Department of Health and Human Services.
(7) The Department of Housing and Urban Development.
(8) The Department of the Interior.
(9) The Department of Justice.
(10) The Department of Labor.
(11) The Department of State.
(12) The Department of Transportation.
(13) The Department of Treasury.
(14) The Department of the Army.
(15) The Department of the Navy.
(16) The Department of the Air Force.
(17) The Environmental Protection Agency.
(18) The General Services Administration.
(19) The National Aeronautics and Space Administration.
(20) The Small Business Administration.
(21) The Veterans' Administration.

§ 522. Functions

An official of an agency designated pursuant to section 521 of this title shall—

(1) conduct, supervise, and coordinate all financial management activities and operations of the agency;

(2) advise the agency head on financial management;

(3) develop and maintain agency financial management systems, including accounting systems, internal control systems, and financial reporting systems, which—

(A) implement the policies and procedures of the Director and the accounting principles, standards, and requirements prescribed under section 3511 of this title and the internal controls standards prescribed under section 3512 of this title;

(B) comply with the requirements of law applicable to such systems; and

(C) provide for—

(i) complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of agency management;

(ii) the development of cost information;

(iii) the integration of accounting and budgeting systems; and

(iv) the systematic measurement of performance;

(4) direct and manage agency financial management activities and operations, including—

(A) the preparation and annual revision of a five-year agency financial management plan;

(B) the development of agency financial management budgets;

(C) the recruitment and training of qualified, trained personnel to carry out agency financial management functions;

(D) the management of financial management system design or enhancement projects; and

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(E) the implementation of asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control; and

(5) prepare and transmit an annual report to the agency head and the Director, which shall include—

(A) a description and analysis of the status of agency financial management; and

(B) copies of the most recently completed annual agency financial statements required under section 3515 of this title and the most recently completed biennial audit of such statements required under section 3516 of this title.

§ 523. Federal Financial Management Council

(a) There is established in the executive branch the Federal Financial Management Council.

(b) The Federal Financial Management Council shall consist of the Administrator for Financial Management and the officials of executive agencies designated under section 521 of this title.

(c) The Federal Financial Management Council shall—

(1) assist the Director in the identification and establishment of financial management objectives and information requirements of the executive agencies;

(2) assist in the development and implementation of financial management plans;

(3) comment on proposed major changes in financial management operations; and

(4) prepare option papers and recommendations regarding selected issues directly impacting financial management operating activities.

(d) The Federal Financial Management Council shall be chaired by the Administrator for Financial Management.

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CHAPTER 7—GENERAL ACCOUNTING OFFICE

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Subchapter II—General Duties and Powers

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§ 719. Comptroller General reports

(a) * * *

(g) Within 90 days after the President has submitted a report under section 1115 of this title, the Comptroller General shall prepare and transmit to the Congress a statement analyzing such report. The statement shall include—

(1) an evaluation of the items contained in such report which the Comptroller General considers to be of particular interest to the Congress;

(2) a specification of any questions or issues raised by such report which the Comptroller General considers to require further clarification;

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(3) an analysis of the extent to which such report complies with the requirements of section 1115 of this chapter; and

(4) recommendations, if any, for improvement of the management or organization of the executive branch of the Government, including modification or repeal of statutory impediments to efficient and effective management.

[(g)] *(h)* When the Comptroller General submits a report to Congress, the Comptroller General shall deliver copies of the report to—

(1) the Committees on Governmental Affairs and Appropriations of the Senate;

(2) the Committees on Government Operations and Appropriations of the House;

(3) a committee of Congress that requested information on any part of a program or activity of a department, agency, or instrumentaiity of the United States Goverment (except a mixed-ownership Government corporation) or the District of Columbia government that is the subject of any part of a report; and

(4) any other committee of Congress requesting a copy.

[(h)] *(i)*(1) The Comptroller General shall prepare—

(A) each month each list of reports issued during the prior month; and

(B) at least once each year a list of reports issued during the prior 12 months.

(2) A copy of each list shall be sent to each committee of Congress and each member of Congress. On request, the Comptroller General promptly shall provide a copy of a report to a committee or member.

[(i)] *(j)* On request of a committee of Congress, the Comptroller General shall explain to and discuss with the committee or committee staff a report the Comptroller General makes that would help the committee—

(1) evaluate a program or activity of an agency within the jurisdiction of the committee; or

(2) in its consideration of proposed legislation.

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Subtitle II—The Budget Process

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Chapter	Sec.
11. The Budget and Fiscal, Budget, and Program Information	1101
13. Appropriations	1301
15. Appropriation Accounting	1501

CHAPTER 11—THE BUDGET AND FISCAL, BUDGET, AND PROGRAM INFORMATION

Sec.
1101. Definitions.
1102. Fiscal year.
1103. Budget ceiling.
1104. Budget and appropriations authority of the President.
1105. Budget contents and submission to Congress.
1106. Supplemental budget estimates and changes.

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1107. Deficiency and supplemental appropriations.
1108. Preparation and submission of appropriations requests to the President.
1109. Current programs and activities estimates.
1110. Year-ahead requests for authorizing legislation.
1111. Improving economy and efficiency.
1112. Fiscal budget, and program information.
1113. Congressional information.
1114. Budget information on consulting services.
1115. Annual Management report.

* * * * * * *

§ 1105. Budget Content and submission to Congress

* * * * * * *

(a) * * *

(26) a separate statement for each agency operating credit programs detailing the agency's compliance with, and activities under, subchapters I and II of chapter 37 and under chapter 38 of this title, which statement shall be filed in a format to be prescribed by the Administrator for Financial Management and shall consider the information described in section 3719 of this title.

* * * * * * *

§ 1108. Preparation and submission of appropriations requests to the President.

* * * * * * *

(a) * * *

(n) The head of each executive agency shall include in each appropriation request under this section a statement as to whether, and to what extent, the information submitted in such request was generated or supported by accounting systems that conform to the accounting principles, standards, and requirements prescribed under section 3511 of this title and to such accounting and other related requirements as may be required by the Administrator for Financial Management. To the extent an accounting system of an executive agency does not conform to such principles, standards, and requirements, the agency head shall include in such statement—

(1) an analysis and explanation of the problems with such system;

(2) a specification of the steps taken to assure that the President can rely on the accuracy of the information contained in such request and that the Congress can rely on the accuracy of the information presented in the budget submitted under section 1105 of this title; and

(3) an estimate of the date on which such system will conform with such principles, standards, and requirements.

* * * * * * *

§ 1115. Annual management report

(a) With each budget of the United States Government submitted under section 1105 of this title, the President shall submit to the Congress a report on the management of the executive branch of the Government with respect to the most recently completed fiscal year,

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the current fiscal year, and the fiscal year for which the budget is submitted. Each such report shall include—

(1) an overview of the general management improvement goals of the President for the executive branch of the Government during such fiscal years;

(2) a summary of the management problems and issues for the executive branch of the Government, and the major management improvement initiatives and accomplishments for the executive branch of the Government, involving—

(A) program delivery systems;

(B) human resources management;

(C) productivity;

(D) information resources management;

(E) financial management;

(F) procurement and grants management;

(G) property management; and

(H) any other relevant subject areas; and

(3) for each initiative summarized in paragraph (2), a description, where feasible and appropriate, of—

(A) the purpose of the initiative;

(B) the progress and problems in the implementation of the initiative; and

(C) any significant and identifiable impact of the initiative on agency operations;

(4) proposals for legislative or other action to improve the management or organization of the executive branch of the Government, including proposals to remove statutory impediments to the improvement of the management of the executive branch of the Government; and

(5) a summary of each significant new management policy for the executive branch of the government which has been adopted or which is planned for the current fiscal year or the fiscal year for which the budget is submitted, and a discussion of the reasons for such policy.

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CHAPTER 35—ACCOUNTING AND COLLECTION

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Subchapter II—Accounting Requirements, Systems, and Information

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3515. Preparation of agency financial statements.
3516. Audit of agency financial statements.

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Subchapter II—Accounting Requirements, Systems, and Information

§ 3511. Prescribing accounting requirements and developing accounting systems

(a) The Comptroller General shall prescribe the accounting principles, standards, and requirements that the head of each executive agency shall observe. Before prescribing the principles, standards, and requirements, the Comptroller General shall consult with the Secretary of the Treasury, *the Administrator for Financial Management,* and the President on their accounting, financial reporting, and budgetary needs, and shall consider the needs of the heads of other executive agencies.

(b) * * *

(3) provide a method of—

(A) integrated accounting for the United States Government;

(B) complete disclosure of the results of the financial operations of each agency and the Government, *including a method for the preparation of the financial statements required by section 3515 of this title*;

(C) financial information and control the President and Congress require to carry out their responsibilities.

* * * * * * *

§ 3512. Executive agency accounting systems

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(g) The Administrator for Financial Management shall provide consultative assistance to executive agencies in the development or revision of executive agency accounting and internal control systems in accordance with this section.

(h)(1) The Administrator for Financial Management shall review reports submitted under this section by the head of each executive agency. Based on such reviews, reports by the General Accounting Office, and such additional information as may be appropriate, the Administrator, after consultation with the Comptroller General, shall determine whether the accounting and internal controls systems substantially comply with the requirements of this section. If, at any time after three years after the effective date of this subsection, the Administrator, after consultation with the Comptroller General, determines that an accounting or internal control system does not substantially comply with the requirements of this section—

(A) the accounting and other financial management operations of the executive agency which are supported by the system will be subject to the direction and supervision of the Administrator to the extent considered necessary by the Administrator; and

(B) the Administrator is authorized to direct the head of the executive agency to use any funds available to the executive agency for administrative expenses to take such action as may be necessary to bring the accounting and internal controls systems of the agency into compliance with this section.

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(2) In carrying out paragraph (1), the Administrator may request the assistance of an executive agency which has accounting and internal control systems which are in compliance with this section.

(3) If the Administrator for Financial Management directs the head of an executive agency to use funds in accordance with subparagraph (B) of paragraph (1), the Administrator shall, within 5 days after making such direction, transmit a written statement to the Committees on Appropriations of the Senate and the House of Representatives specifying the amount of funds used in accordance with such subparagraph.

(4) The President shall include with the budget submitted under section 1105 of this title for a fiscal year a separate written statement specifying the total amount of funds expended under subparagraph (B) of paragraph (1) during the most recently completed fiscal year.

* * * * * * *

§ 3515. Preparation of agency financial statements

(a) By December 31 each year (beginning with the year in which ends the first full fiscal year completed after the date of enactment of this section) each executive agency shall have prepared financial statements that include the accounts of all of its offices, bureaus, and activities and that present the financial position and results of operations of such agency during the preceding fiscal year.

(b) The Administrator for Financial Management, in conjunction with the Secretary of the Treasury and in consultation with the Comptroller General, shall prescribe the form and content of the financial statements required by subsection (a) of this section. Such form and content shall be consistent with the principles, standards, and requirements prescribed under section 3511 of this title.

(c)(1) This section does not apply to the Central Intelligence Agency.

(2) A financial statement prepared under this section is not required to include any information with respect to intelligence activities. For purposes of this paragraph, the term 'intelligence activities' has the same meaning as in section 3.4(e) of Executive Order 12333, issued December 4, 1981.

§ 3516. Audit of agency financial statements

(a) Beginning with the financial statements prepared under section 3515(a) of this title for fiscal years 1990 and 1991, and biennially thereafter, a financial and compliance audit shall be performed of the financial statements prepared under such section for the two most recently completed fiscal years, except as provided in subsection (g) of this section. The audit shall be conducted in accordance with generally accepted Government auditing standards issued by the Comptroller General.

(b) A financial and compliance audit of an executive agency's financial statements required by subsection (a) of this section shall be performed by—

(1) the Inspector General of the executive agency;

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(2) an internal auditor of the executive agency who is independent (as defined by generally accepted Government auditing standards issued by the Comptroller General); or

(3) an independent external auditor who meets the qualifications and other requirements of the generally accepted Government auditing standards issued by the Comptroller General.

(c) The Comptroller General shall perform the audit required by subsection (a) of this section, when considered appropriate by the Comptroller General or upon the request of a committee of Congress. An audit performed by the Comptroller General under this subsection shall be in lieu of the audit that otherwise would be performed by the persons specified in subsection (b) of this section.

(d) The Comptroller General is authorized to review an audit conducted by the Inspector General of an executive agency, an internal auditor of an executive agency, or an independent external auditor, to ensure compliance with the accounting and audit requirements of this section. The Comptroller General shall report to the Congress and the executive agency the results of any review conducted under this paragraph, and shall include in such report any recommendations the Comptroller General considers appropriate.

(e) A report on any audit conducted under this section shall be transmitted to the head of the executive agency and the Congress within 180 days after the end of the fiscal year for which such audit was conducted. A copy of the report shall be transmitted to the President, the Administrator for Financial Management, and the Comptroller General.

(f) Within two years after the date of enactment of this section, the Administrator for Financial Management, in consultation with the Comptroller General, agency officials designated under section 521 of this title, and the Inspectors General, shall submit to the Congress a plan for ensuring that the audits required by this section for agency financial statements for fiscal year 1991 are completed. The Administrator shall subsequently notify the Congress of any substantive changes to the plan submitted.

(g) If the Administrator for Financial Management and the Comptroller General jointly determine, after an examination of the adequacy of the accounting and internal control systems of an executive agency, that the audits required under subsection (a) of this section should be conducted more or less frequently than biennially, the Administrator and the Comptroller General shall jointly establish a schedule for the conduct of such audits. Such schedule shall provide that such audits shall be conducted at least every 3 years. The Administrator shall provide to the Congress a copy of any such schedule with a statement explaining the reasons for changing the frequency of audits required by subsection (a).

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CHAPTER 37—CLAIMS

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Subchapter II—Claims of the United States Government

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3720B. Disbursement of Federal funds.

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Subchapter II—Claims of the United States Government

§ 3711. Collection and compromise

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(f)(1) When trying to collect a claim of the Government under a law except the Internal Revenue Code of 1954 (26 U.S.C. 1 et. seq.), the head of an executive of legislative agency [may] *shall* disclose to a consumer reporting agency information from a system of records that an individual is responsible for a claim if—

(A) notice required by section 552a(e)(4) of title 5 indicates that information in the system [may] *shall* be disclosed to a consumer reporting agency;

* * * * * * *

§ 3716. Administrative offset

(a) After trying to collect a claim from a person under section 3711(a) of this title, the head of an executive agency [may] *shall* collect the claim by administrative offset, *whenever it is feasible and in the interests of the Federal Government to do so.* The head of the agency [may] *shall* collect by administrative offset only after giving the debtor—

* * * * * * *

§ 3718. Contracts for collection services

(a) Under conditions the head of an executive or legislative agency considers appropriate *to augment agency collection efforts,* the head of the agency [may] *shall* make contract with a person for collection services to recover indebtedness owed the United States Government. The contract shall provide that—

* * * * * * *

(e) If the head of the agency responsible for the administration of a Federal loan program, in conjunction with the Administrator for Financial Management, determines that in a specific case, the requirements of subsection (a) may not be appropriate or in the best interests of the Government, the head of the agency shall not be required to apply such requirement in such case and shall prepare and submit a report to the Congress which specifies such determination and the reasons therefor.

§ 3719. Reports on debt collection activities

(a) In consultation with the Secretary of the Treasury and the Comptroller General, the Director of the Office of Management and Budget shall prescribe regulations requiring the head of each agency with outstanding debts to prepare and submit to the Director and the Secretary at least once each year a report summarizing the status of loans and accounts receivable managed by the head of the agency. The report shall contain—

(1) information on—

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(A) the total amount of loans and accounts receivable owed the agency and when amounts owed the agency are due to be repaid;

(B) the total amount of receivables and number of claims at least 30 days past due;

(C) the total amount written off as actually uncollectible and the total amount allowed for uncollectible loans and accounts receivable;

(D) the rate of interest charged for overdue debts and the amount of interest charged and collected on debts;

(E) the total number of claims and the total amount collected; [and]

(F) the number and total amount of claims referred to the Attorney General for settlement and the number and total amount of claims the Attorney General settles; *and*

(G) the agency's progress in implementing the requirements of subchapters I and II of chapter 37 and chapter 38 of this title, and the agency's goals (both monetary and programmatic) for improving collections and reducing delinquencies an debt writeoffs;

* * * * * * *

§ 3720B. Disbursement of Federal funds

(a) Each head of an executive agency (other than the Tennessee Valley Authority) shall, under such regulations as the Secretary of the Treasury, in consultation with the Administrator for Financial Management, shall prescribe, provide for the timely disbursement of Federal funds through cash, checks, electronic funds transfer, or any other means identified by the Secretary. The Secretary may collect from any executive agency which does not comply with the preceding sentence a charge in an amount the Secretary determines to be the cost to the general fund of the Treasury caused by such noncompliance.

(b) The head of an executive agency shall pay to the Secretary of the Treasury charges imposed pursuant to subsection (a) of this section. Payments shall be made out of amounts appropriated or otherwise made available to carry out the program to which the disbursements relate. The amounts of the charges paid under this subsection shall be deposited in the Cash Management Improvements Fund established under section 3720(c) of this title.

CHAPTER 38—CREDIT MANAGEMENT

Subchapter I—General Provisions

Sec.
3901. Definitions.
3902. Management improvement plans.

Subchapter II—Credit Extension and Administration

3911. Regulations and financial contract.
3912. Subsidy statement.
3913. Interest rates.
3914. Prior default by applicant.
3915. Default and acceleration clauses.

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3816. Notice of collection policies.
3817. Retaining documents and information.
3818. Study on private sector participation.
3819. Effective date.

Subchapter III—Debt Management

3821. Collection targets.
3822. Delinquency and default standards.
3823. Audit of credit programs.
3824. Regulation deadline.

Subchapter I—General provisions

§ 3801. Definitions

For purposes of this chapter—

(1) The term "Federal agency" means an executive department, an independent Federal establishment, of a corporation or other entity established by law that is owned in whole or in part by the United States.

(2) The term "obligation" means any note, bond, debenture, or other evidence of indebtedness, but does not include Federal Reserve notes or stock evidencing an ownership interest in the issuing Federal agency.

(3) The term "direct loan" means a disbursement of funds by a Federal agency (not in exchange for goods or services) under a contract that requires the repayment of such funds with or without interest. Such term shall also include an obligation guaranteed by a Federal agency and purchased by the Federal Financing Bank. Such term shall not include any commodity price-support loan made by the Commodity Credit Corporation.

(4) The term "subsidy" means, with respect to a direct loan, the difference between—

(A) the costs (including interest) which would have been incurred by a borrower to obtain the loan from private sources, minus

(B) the costs (including interest) which were incurred by the borrower to obtain the loan from the Government.

(5) the term "debt" means an amount of money or property that has been determined by an appropriate official of a Federal agency to be owed to the United States by any person, organization, or entity except another Federal agency.

(6) the term "loan guarantee" means contingent liability of a Federal agency. A guaranteed loan is—

(A) any debt obligation on which a Federal agency pledges to pay part or all of the amount due to a lender or holder in the event of default by the borrower;

(B) any agreement in which a Federal agency pledges the use of insurance premiums accumulated in a program of pooled risks in order to secure a lender in the event of default by a borrower; or

(C) a direct Federal loan that a Federal agency sold under a guarantee or agreement to repurchase.

(7) The term "credit extension" means that portion of the credit management cycle involving review and approval of requests for short-term or long-term credit.

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(8) The term "financial contract" means any agreement or contract made by a Federal agency, the primary purpose or result of which is to make private credit available, or available on more favorable terms than in the absence of the contract, to a non-Federal entity by indirectly or directly assuming the risk involved. Such term includes financial contracts such as an agreement to pay all or part of the principal or interest on the debt obligation of a non-Federal entity (debt service payments), financial lease agreement for assets and project financing, and repayment arrangements.

(9) The term "creditworthy" means a favorable determination entitling an applicant to receive credit, which is based on—

(A) the perceived ability and willingness of the borrower to repay the debt and the lending organization's level of acceptable risk; and

(B) the consideration of other Federal obligations that could jeopardize or be jeopardized by the new debt under consideration.

(10) The term "receivables" means amounts owed the Government upon completion of the acts giving rise to claims, and includes amounts such as amounts due for taxes, loans, sales of goods and services, fines, penalties, forfeitures, interest, overpayments, fees, duties, rents, royalties, claims, damages, audit disallowances, and travel advances.

(11) The term "account servicing" means that portion of the credit management cycle dealing with monitoring the status of accounts of indebtedness, maintaining records of current debts, billing for amounts due, collecting amounts due, collecting past due amounts, handling debtor correspondence, performing followup functions, and providing accurate reporting of debt portfolios.

(12) The term "debt collection" means that portion of the credit management cycle dealing with recovery of amounts due after routine followup fails, and includes the assessment of the debtor's ability to pay, the exploration of possible alternative arrangements to increase the debtor's ability to pay, and the other efforts to secure payment.

(13) The term "delinquency" menas the status of any account which is 30 days past due.

(14) The term "default" means the failure to meet any obligation or term of credit, grant, or contract agreement that causes the lender to accelerate demand on the borrower because of the severity of the borrower's breach of the agreement, and for purposes of this chapter, default occurs—

(A) In the case of a direct loan, when the account is past due over 180 days; and

(B) In the case of a guaranteed loan, when the Government repurchases the loan.

(15) The term "reschedule" means to establish new terms and conditions to facilitate repayment of a debt.

(16) The term "credit report" means any written or documented oral communication of information provided by a commercial or consumer credit reporting agency dealing with the creditworthiness or financial reliability of an applicant or debtor.

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§ 3802. Management improvement plans

(a) The head of each Federal agency shall, after consultation with the Administrator for Financial Management and the Secretary of the Treasury, prepare comprehensive credit management and debt collection plans. Such plans shall, at a minimum:

(1) Provide for the establishment of credit management and debt collection practices, procedures, and regulations that implement the requirements of this chapter and of subchapters I and II of chapter 37 of this title, the related requirements of the Comptroller General, the Attorney General, the Administrator for Financial Management, and the Secretary of the Treasury, and all other relevant laws, regulations, rulings, and guidance.

(2) Define and assign loan management and debt collection responsibilities within the agency.

(3) Identify weaknesses in agency systems, outline planned corrections, and include scheduled completion dates and goals for corrective actions.

(4) Establish employee performance appraisal standards and bonus award programs that provide incentives for improved debt management practices and systems and that consider employee contributions to improving the operation of loan management and debt collection programs.

(5) Address the establishment of accounting practices and procedures and automated management information systems to enable the agency to produce accurate financial reports on programs that generate receivables as required by the Administrator for Financial Management and that meet the requirements prescribed under section 3511 of this title, including reports such as operating statements, statements of financial position, and statements of cash flow management.

(6) Identify collection targets, loan loss estimates, program subsidy levels, and estimates of loan writeoffs, claims on guarantees, defaulted loans, delinquencies, and rescheduled debt.

(7) Outline strategies for reducing risk and increasing collections.

(8) Provide for the agency's Inspector General, or in the case of an agency in which an Office of Inspector General has not been established by law, an officer of the agency performing functions similar to an Inspector General, to periodically review and report on credit management and debt collection practices.

(b) Each plan required by subsection (a) of this section shall be submitted to the Administrator for Financial Management in accordance with a schedule which is prescribed by the Administrator and revised annually. The plan may be included as part of the five-year financial management plan required by section 513(d) of this title. Each plan required by subsection (a) of this section shall be revised annually.

(c) The Administrator for Financial Management shall review each plan submitted under this section to assure that planned actions and policies are—

(1) consistent with the overall objectives and the requirements of this chapter and subchapters I and II of chapter 37, and the related requirements of the Comptroller General, the Attorney

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General, the Secretary of the Treasury, and the Administrator; and

(2) applied uniformly across the Government to assure parity and consistency.

Subchapter II—Credit Extension and Administration

§ 3811. Regulations and financial contract

(a)(1) The Administrator for Financial Management shall establish Federal credit management policies and promulgate regulations implementing this subchapter. Such policies and regulations shall apply to—

(A) direct loans, loan guarantees, loan insurance, financial contracts designed to support borrowing, and debts arising from contracts, grants, and other administrative arrangements; and

(B) all executive agencies and to Government corporations unless specifically exempted from Federal control by other statutory authority.

(2) The Administrator shall include in regulations promulgated under paragraph (1) of this subsection regulations with respect to—

(A) all credit practices necessary to make Federal credit practices substantially conform to the best established credit practices of the private sector;

(B) credit analysis of borrowers (including determinations with respect to creditworthiness, financial responsibility, and ability to repay);

(C) program eligibility;

(D) alternative sources of credit;

(E) use of taxpayer identification numbers;

(F) establishment of regular repayment schedules;

(G) account servicing practices (including adequate recordkeeping and documentation, account review and loss estimates, followup procedures on delinquent accounts, and automation of loan servicing activities);

(H) debt accounting and reporting systems;

(I) interest, penalties, and administrative costs;

(J) administrative offset;

(K) use of collection agencies;

(L) referral for litigation;

(M) calling guarantees;

(N) controlling and foreclosing on collateral;

(O) Federal employee salary offset;

(P) income tax refund offset;

(Q) rescheduling;

(R) writeoff and closeout procedures;

(S) portfolio sales;

(T) management review;

(U) improvement plans; and

(V) collection targets and delinquency and default standards.

(3) The Administrator for Financial Management shall promulgate each regulation under paragraph (1) of this subsection in accordance with subsections (b), (c), and (d) of section 553 of title 5. For any such regulation, the period for public comment required under subsection (b) of such section shall be at least 90 days.

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(4) No regulation may be promulgated as final under paragraph (1) of this subsection until after the expiration of the period for public comment required under paragraph (3) of this subsection.

(5) The Administrator for Financial Management shall provide copies of each final regulation promulgated under paragraph (1) of this subsection to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(b) The Secretary of the Treasury, in consultation with the Administrator for Financial Management, shall prescribe minimum requirements for contracts for all loans or loan guarantees governed by this chapter.

§ 3812. Subsidy statement

Any proposal by a Federal agency for legislation to establish new credit programs or to amend existing credit programs shall contain an explicit statement of any subsidies in each direct or guaranteed loan program with which such proposal is concerned.

§ 3813. Interest rates

It is the policy of the Congress that interest rates in all new direct loan programs shall be related to market rates for comparable private sector loan programs, and the interest rates in such direct loan programs shall be adjusted annually to reflect changes in comparable private sector rates.

§ 3814. Prior default by applicant

Federal loan or loan guarantee funds may not be made available to any applicant who defaults on a Federal loan or loan guarantee made after the effective date of this section, notwithstanding any other provision of Federal law which does not supersede this section by specific reference to this section, unless—

(1) the new loan or loan guarantee is necessary to protect the Government's interests;

(2) the debt in default was discharged under Federal bankruptcy laws; or

(3) the default has been cured.

§ 3815. Default and acceleration clauses

(a) Loan and loan guarantee contracts shall contain default and acceleration clauses. Default clauses shall provide for interest from the date of default and at the greater of the interest rate due under the existing loan or loan guarantee contract or the rate prescribed by the Secretary of the Treasury under section 3717 of this title. Acceleration clauses shall provide that upon default the entire remaining principal balance shall be due and subject to collection at that time.

(b) If the head of a Federal agency responsible for the administration of a Federal loan program, in conjunction with the Administrator for Financial Management, determines that in a specific case, the requirements of subsection (a) of this section may not be appropriate or in the best interests of the Government, the head of the Federal agency shall not be required to apply such requirements in

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such case and shall prepare and submit a report to the Congress which specifies such determination and the reasons therefor.

§ 3816. Notice of collection policies

(a) Each applicant for a federal loan, prior to receiving credit from the Government, shall be provided a notice of—

(1) the applicant's responsibility to repay the loan in accordance with its terms; and

(2) Federal debt collection policies and practices.

(b) Each applicant for a Federal loan shall be required to certify in writing that the applicant has read and understands the contents of the notice provided under subsection (a) of this section and the terms of the loan agreement.

(c) Within 90 days after the date of enactment of this chapter, the Administrator for Financial Management, in consultation with the Secretary of the Treasury, shall develop the format, and prescribe the requirements, of the notice required under this section.

§ 3817. Retaining documents and information

(a) For each Federal loan, a Federal agency shall maintain a file containing all documents and information that are necessary and appropriate to—

(1) establish the existence, amount, terms, and security or collateral of the loan;

(2) service the loan and ascertain, at any given time, the status of repayment of the loan; and

(3) facilitate the collection of the loan if the loan becomes delinquent or in default.

(b) The file required under subsection (a) of this section with respect to a Federal loan shall include—

(1) the borrower's name and address;

(2) the borrower's taxpayer identification number;

(3) the amount and nature of the loan and the payment schedule;

(4) the status of the account and the payment history;

(5) a summary of any prior loan contracts between the agency and the borrower;

(6) credit approval documentation;

(7) an identification of collateral;

(8) the notice provided to the borrower under section 3816 of this title; and

(9) all other documents relating to the loan as may be required by the Administrator for Financial Management or the head of the agency.

§ 3818. Study on private sector participation

(a) The President shall provide for the conduct of a study to determine if any Federal direct loan programs could be carried out, in whole or in part, by private lending institutions as direct loans without Government guarantees in a manner which—

(1) is at least as cost effective as Federal direct loan programs; and

(2) in accordance with the objectives of the statutes authorizing the loan programs.

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(b) Within one year after the date of enactment of this chapter, the President shall transmit to the Congress a report which describes the results of the study required under subsection (a) of this section and contains such recommendations as the President considers appropriate, including recommendations for legislation.

§ 3819. Effective date

The provisions of this subchapter shall take effect 90 days after the date of enactment of this chapter, except that section 3816(c) of this title shall take effect on the date of enactment of this chapter.

Subchapter III—Debt Management

§ 3821. Collection targets

(a) Each Federal agency which operates credit programs, as part of its budget request (beginning with budget requests for fiscal year 1988), shall, in consultation with the Administrator for Financial Management, develop and specifically identify collection targets for all agency credit programs.

(b) The Administrator for Financial Management shall include, in the regulations promulgated under section 3811 of this title, standards governing the manner in which Federal agencies set debt collection targets under this section. Such standards shall, as a minimum, require agencies to consider, for each program or activity, such factors as—

(1) the characteristics of the debts and debtors involved;

(2) the historical experience of the agency, other Government agencies, and the private sector when collecting similar types of debt;

(3) planned improvements in the agency's debt collection programs; and

(4) such other factors as the Administrator considers appropriate.

(c) Each year, each Federal agency, in consultation with Administrator, shall review its collection targets and adjust the targets as necessary.

§ 3822. Delinquency and default standards

(a) Within one year after the date of enactment of this chapter, each Federal agency operating credit programs shall, in consultation with the Administrator for Financial Management, develop delinquency and default rate standards for each loan and loan guarantee program and report such standards to the Congress.

(b) The subsidy statement required under section 3812 of this title for any proposal of a Federal agency for legislation to enact new credit programs or to amend existing credit programs shall contain delinquency and default standards.

§ 3823. Audit of credit programs

(a) Within two years after the date of enactment of this chapter, the credit management and debt collection systems and operating policies of each Federal agency operating loan programs must be audited by the Inspector General of the agency, or in the case of an agency in which an Office of Inspector General has not been estab-

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lished by law, by an officer of the agency performing functions similar to an Inspector General.

(b) Each audit conducted under subsection (a) shall determine whether the agency has met the requirements of subchapters I and II of chapter 37 of this title, the requirements of this chapter, and the related requirements of the Comptroller General, the Attorney General, the Administrator for Financial Management, and the Secretary of the Treasury. Copies of the audit report of each such audit shall be provided to the Congress and the Administrator for Financial Management. With respect to any weaknesses disclosed by the audit, the agency head, within 60 days, must furnish the Congress with an explanation as to why the weaknesses exist, and a plan of appropriate action to correct those weaknesses.

§ 3824. Regulation deadline

Within one year after the date of enactment of this chapter, each Federal agency operating credit programs shall have promulgated all final agency regulations required by this chapter and subchapters I and II of chapter 37.

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CHAPTER 65—INTERGOVERNMENTAL COOPERATION

Sec.
6501. Definitions.
6502. Information on grants received.
6503. [Transfer and deposit requirements.] *Intergovernmental financing.*
6504. Use of existing State or multimember agency to administer grant programs.
6505. Authority to provide specialized or technical services.
6506. Development assistance.
6507. Congressional review of grant programs.
6508. Studies and reports.

§ 6501. Definitions

In this chapter—

(1) "assistance" means the transfer of anything of value for a public purpose of support or stimulation that is—

(A) authorized by a law of the United States;

(B) provided by the United States Government through grant or contractual arrangements (including technical assistance programs providing assistance by loan, loan guarantee, or insurance); and

(C) not an annual payment by the United States Government to the District of Columbia government under section 502 of the District of Columbia Self-Government and Governmental Reorganization Act (Public Law 93-198, 87 Stat. 813, D.C. Code, § 47-3406).

(2) "comprehensive planning" includes, to the extent directly related to area needs or needs of a unit of general local government—

(A) preparation, as a guide for governmental policies and action, of general plans on—

(i) the pattern and intensity of land use;

(ii) providing public facilities (including transportation facilities) and other governmental services; and

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(iii) the effective development and use of human and natural resources;

(B) long-range physical and fiscal plans for an action referred to in subclause (A) of this clause (2);

(C) a program for capital improvements and other major expenditures based on their relative urgency, and definitive financing plans for the expenditures in the earlier years of the program;

(D) coordination of related plans and activities of States and local governments and agencies concerned; and

(E) preparation of regulatory and administrative measures to support the items referred to in subclauses (A)–(D) of this clause (2).

(3) "executive agency" does not include a mixed-ownership government corporation.

(4)(A) "grant" (except as provided in subclause (C) of this clause (4)) means money, or property provided instead of money, that is paid or provided by the United States Government under a fixed annual or total authorization, to a State, to a local government, or to beneficiary under a plan or program administered by a State or a local government that is subject to approval by an executive agency, if the authorization—

(i) requires the State or local government to expend non-Government money as a condition of receiving money or property form the United States Government; or

(ii) specifies directly, or establishes by means of a formula, the amount that may be provided to the State or local government, or the amount to be allotted for use in each State by the State, local government, and beneficiaries.

(B) "grant" (except as provided in subclause (C) of this clause (4)) also means money, or property provided instead of money, that is paid or provided by the United States Government to a private, nonprofit community organization eligible to receive amounts under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.).

(C) "grant" does not include—

(i) shared revenue;

(ii) payment of taxes;

(iii) payment instead of taxes;

(iv) a loan or repayable advance;

(v) surplus property or surplus agriculture commodities provided as surplus property;

(vi) a payment under a research and development procurement contract or grant awarded directly and on similar terms to all qualifying organizations; or

(vii) a payment to a State or local government as complete reimbursement for costs incurred in paying benefits or providing services to persons entitled to them under a law of the United States.

(5) "head of a State agency" includes the designated delegate of the head of the agency.

(6) "local government" means a unit of general local government, a school district, or other special district established under State law.

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(7) "Administrator" means the Administrator for Financial Management.

(8) "Secretary" means the Secretary of the Treasury.

[(7)](*9*) "special-purpose unit of local government" means a special district, public-purpose local government of a State except a school district.

[(8)](*10*) "State" means a State of the United States, the District of Columbia, a territory or possession of the United States, and an agency, [or] instrumentality, *or fiscal agent* of a State but does not mean a local government of a State.

[(9)](*11*) "unit of general local government" means a county, city, town, village, or other general purpose political subdivision of a State.

§ 6502. Information on grants received

On request of a chief executive officer of a State, a State legislature, or an official designated by either of them, an executive agency carrying out a grant program to States and local governments shall provide the requesting officer or legislature with written information on the purpose and amounts of grant provided to the State or local government.

[§ 6503. Transfer and deposit requirements]

[(a) Consistent with program purposes and regulations of the Secretary of the Treasury, the head of an executive agency carrying out a grant program shall schedule the transfer of grant money to minimize the time elapsing between transfer of the money from the Treasury and the disbursement by a State, whether disbursement occurs before or after the transfer. A State is not accountable for interest earned on grant money pending its disbursement for program purposes.]

[(b) A State may not be required by a law or regulation of the United States to deposit grant money received by it in a separate bank account. However, a State shall account for grant money made available to the State as United States Government grant money in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate executive agency on the status and the application of the money, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related to the grant received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing.]

§ 6503. Intergovernmental financing

(a) Consistent with program purposes, and with regulations of the Secretary, and by means mutually agreed upon by the Secretary and a State, the head of an executive agency carrying out a program shall schedule the transfer of funds to minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means by a State.

(b) Consistent with program purposes and with regulations of the Secretary and by means mutually agreed upon by the Secretary and

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a State, a State shall minimize the time elapsing between transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payments by other means for program purposes.

(c)(1) The Secretary shall issue regulations that will require a State to pay interest on funds from the time that funds are deposited to the State's account until the time that funds are paid out in order to redeem checks or warrants, or make payments by other means for program purposes. Such interest shall be calculated at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(2) Amounts received as payment of interest under this subsecion shall be deposited in the Treasury and credited as miscellaneous receipts, execpt as provided in paragraph (3) of this subsection.

(3) If interest is paid under paragraph (1) of this subsection on funds paid to a State from a trust fund for which the Secretary of the Treasury is the trustee, or from the Unemloyment Trust Fund, such interest shall be credited to such trust fund.

(d) If a State disburses its own funds for program pruposes in accordance with Federal law, regulation, or Federal-State agreement, the State shall be entitled to interest form the time when the State's funds are paid out to redeem checks or warrants, or make payments by other means, until the Federal funds are deposited to the State's bank account. The Secretary shall pay, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary for interest owed to a State under this subsection. Such interest shall be calculated, at a rate equal to the average of the bond equivalent rates of 13-week Treasury bills auctioned during the period for which interest is calculated, as determined by the Secretary.

(e) The budget submitted by the President under section 1105 of this title for a fiscal year shall include a statement specifying, for the most recently completed fiscal year, amounts of interest paid to the Federal Government under subsection (c) of this section and payments of interest to States under subsection (d) of this section.

(f) If a State receives refunds of grant funds, the State shall return those refunds to the executive agency administering the grant program or apply those refunds to reduce the amount of funds owed to the State under such grant program. Interest earned on such refunds shall be considered when setting overall interest obligations between the State and the Federal Government as required by this section.

(g) In cases where the Federal Government makes payment on behalf of a receipient organization, the principles of this section shall apply.

(h) A State may not be required by a law or regulation of the United States to deposit grant money received by it in a separate bank account. However, a State shall account for grant money made available to the State as Untied States Government grant money in the accounts of the State. The head of the State agency concerned shall make periodic authenticated reports to the head of the appropriate Federal executive agency on the status and the application of the money, the liabilities and obligations on hand, and other information required by the head of the executive agency. Records related

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to the grant received by the State shall be made available to the head of the executive agency and the Comptroller General for auditing in accordance with chapter 75 of this title.

(i) The Secretry shall prescribe the methods of payment of interest between the Federal Government and the States, including provisions for offsetting amounts owed by the respective parties. Such methods of payment shall provide for comparable treatment in manner, technique, and timing for both the States and the Federal Government.

(j) The Insepctor General of an executive agency, or an officer of an executive agency performing functions similar to an Inspector General, in the case of an agency in which an Inspector General has not been established by law, shall periodically conduct audits of the implementation of this section. Periodic audits of the implementation of this section shall also be conducted by the States within the scope of work performed under chapter 75 of this title.

(k) Consistent with Federal program purposes and regulations of the adminsitrator for Financial Management, the head of a Federal executive agency carrying out a program shall execute grant awards on a timely basis to assure the availability of funds to accomplish transfers in compliance with subsection (a) of this section.

(l) In determining the amount to be paid by a State to the Federal Government under subsection (c) of this section, or to a State by the Federal Government under subsection (d) of this section, the Secretary shall consider costs incurred by the State determining the amount due.

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Subtitle VI—Miscellaneous

Chapter		Sec.
91.	Government Corporations	9101
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CHAPTER 91—GOVERNMENT CORPORATIONS

Sec.
9101. Definitions.
9102. Establishing and acquiring corporations.
9103. Budgets of wholly owned Government corporations
9104. Congressional action on budgets of wholly owned Government corporations.
9105. Audits.
9106. [Audit reports.] *Financial reports.*
9107. Accounts.
9108. Obligations.
9109. Exclusion of a wholly owned Government corporation from this chapter.

* * * * * * *

[§ 9105. Audits]

[(a)(1) Under regulations of the Comptroller General, the Comptroller General shall audit financial transactions of—

[(A) wholly owned Government corporations; and

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[(B) mixed-ownership Government corporations during periods in which capital of the United States Government is invested in a mixed-ownership Government corporation.]

[(2) The Comptroller General shall audit each Government corporation at least once every 3 years. The Comptroller General shall audit the Federal Savings and Loan Insurance Corporation and Federal home loan banks on a calendar year basis.]

[(b) In conducting an audit under subsection (a) of this section, the Comptroller General—

[(1) to the greatest extent the Comptroller General considers practicable, shall use reports of examinations of a Government corporation that a supervising administrative agency makes; and

[(2) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), may make a contract for professional services with a firm or organization for a temporary period or special purpose.]

[(c) An audit under subsection (a) of this section shall be conducted consistent with principles and procedures applicable to commercial corporate transactions where the accounts of a Government corporation usually are kept. A Government corporation shall—

[(1) make available to the Comptroller General for audit all records and property of, or used by, the corporation that are necessary for the audit; and

[(2) provide the Comptroller General with facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, or custodians.]

[(d) Regulations prescribed under subsection (a) of this section may provide that any part of an account of an accountable official about a financial transaction of a wholly owned Government corporation sent to the Comptroller General for settlement may be kept at the office of the corporation and that the Comptroller General may settle any part of the account on the basis of an examination during an audit. This subsection does not affect the authority of the Tennessee Valley Authority under section 9(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831h(b)).]

[(e) The Comptroller General shall pay the cost of an audit under this section. A Government corporation shall reimburse the Comptroller General for the cost of the audit as determined by the Comptroller General. The Comptroller General shall deposit the reimbursement in the Treasury as miscellaneous receipts. Except as expressly provided by law, a Government corporation may not pay the cost of a private audit of the financial records of the corporation.]

[(f) An audit under subsection (a) of this section is in place of an audit of the financial transactions of a Government corporation the Comptroller General is required to make in reporting to Congress or the President under another law.]

[(g) Necessary amounts are authorized to be appropriated to the Comptroller General to carry out this section.

§ 9105. Audits

(a)(1) The financial statements of—

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(A) wholly owned Government corporations; and

(B) mixed-ownership Government corporations, for periods in which capital of the United States Government is invested in a mixed-ownership Government corporation,

shall be audited annually. Such Government corporations, in consultation with the Comptroller General, shall provide for an independent external auditor to conduct such audits, in accordance with principles and procedures applicable to commercial corporate transactions.

(2) The Comptroller General is authorized to review an audit conducted under paragraph (1) of this subsection by a Government corporation's independent external auditor to ensure compliance with the requirements of this section. The Comptroller General shall report to the Congress and the Government corporation the results of any review conducted under this paragraph, and shall include in such report any recommendations the Comptroller General considers appropriate.

(b)(1) In lieu of an annual audit that otherwise would be performed by an independent external auditor under paragraph (1) of subsection (a), the Comptroller General, as the Comptroller General considers necessary or upon the request of a committee of Congress, shall audit the financial statements of a Government corporation in the manner provided in such paragraph.

(2) A Government corporation shall reimburse the Comptroller General for the full cost of any audit conducted under paragraph (1) of this subsection, as determined by the Comptroller General. Reimbursements received by the Comptroller General shall be retained without fiscal year limitation and shall be used for the purposes authorized by this section.

(c) All books, accounts, financial records, reports, files, workpapers, and property belonging to or in use by a Government corporation and the Government corporation's auditor, needed for purposes of this section, shall be made available to the representatives of the Comptroller General.

(d) Activities conducted under subsection (a)(2) or (b)(1) are in lieu of an audit of the financial transactions of a Government corporation the Comptroller General is required to make in reporting to Congress or the President under any other law.

(e) Necessary amounts are authorized to be appropriated to the Comptroller General to carry out this section.

[§ 9106. Audit reports]

[(a) The Comptroller General shall submit to Congress a report on each audit of a Government corporation under section 9105 of this title not later than 6.5 months after the end of the last year covered by the audit. The report shall state the scope of the audit and include—

[(1) a statement (showing intercorporate relations) of assets, liabilities, capital, and surplus or deficit;

[(2) a statement of surplus or deficit analysis;

[(3) a statement of income and expenditures;

[(4) a statement of sources and the use of money;

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[(5) specifically each financial transaction or undertaking the Comptroller General believes was carried out or made without authority of law;

[(6) comments and information the Comptroller General considers necessary to keep Congress informed about the operations and financial condition of the Government corporation, including a statement of impaired capital noticed and recommendations for the return of capital of the United States Government or the payment of dividends the Comptroller General believes should be made; and

[(7) other recommendations the Comptroller General considers advisable.]

[(b) The Comptroller General shall give the President, the Secretary of the Treasury, and the Government corporation a copy of the report when it is submitted to Congress.]

§ 9106. Financial reports

(a)(1) A Government corporation shall submit to Congress a report of financial position and results of operations, including an audit conducted under section 9105 (a)(1) or (b)(1) of this title, not later than 180 days after the end of the Government corporation's fiscal year.

(2) A Government corporation's financial report shall include—

(A) a balance sheet showing assets, liabilities, capital and surplus or deficit;

(B) a statement of income;

(C) a statement of changes in financial position;

(D) an opinion on the financial statements resulting from an audit conducted under section 9105 (a)(1) or (b)(1) of this title;

(E) a statement of whether any transaction was carried out or was made without authority of law;

(F) a report on the adequacy of the Government corporation's internal controls; and

(G) any other comments and information necessary to inform Congress about the operations and financial condition of the corporation.

(b) A Government corporation shall give the President, the Administrator for Financial Management, the Secretary of the Treasury, and the Comptroller General a copy of the report when it is submitted to Congress.

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UNITED STATES CODE

TITLE 44—PUBLIC PRINTING AND DOCUMENTS

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CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

* * * * * * *

§ 3501. Purpose

The purpose of this chapter is—

* * * * * * *

(3) to maximize the usefulness of information collected, *maintained, and disseminated* by the Federal Government;

* * * * * * *

(5) to ensure that automatic data processing, telecommunications, *and other information* technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, *improves the quality of decisionmaking,* reduces waste and fraud, and wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information for the Government; and

* * * * * * *

§ 3502. Definitions

As used in this chapter—

* * * * * * *

(11) the term "information collection request" means a written report form, application form, schedule, questionnaire, reporting or recordkeeping requirement, *collection of information requirement,* or other similar method calling for the collection of information;

* * * * * * *

(13) the term 'information resources management' means the planning, budgeting, organizing, directing, training, promoting, contolling, and management activities associated with the burden, collection, creation, use, and dissemination of information by agencies, and includes the management of information and related resources such as information technology hardware, software, and services employed by agencies;

(14) [13] the term "information systems" means management information systems;

(15) [14] the term "person" means an individual, partnership, association, corporation, business trust, or legal representative, an organized group of individuals, a State, territorial, or local government or branch thereof, or a political subdivision of a State, territory, or local government or a branch of a political subdivision;

(16) [15] the term "practical utility" means the ability of an agency to use information it collects, particularly the capability to process such information in a timely and useful fashion; and

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(*17*) [16] the term "recordkeeping requirement" means requirement imposed by an agency on persons to maintain specified records.

* * * * * * *

§ 3503. Office of Information and Regulatory Affairs

* * * * * * *

(b) Thee shall be at the head of the Office an Administrator who shall be appointed [by, and who shall report directly to, the Director.] *by the President, by and with the advice and consent of the Senate.* The Director shall delegate to the Administrator the authority to administer all functions under this chapter, except that any such delegation shall not relieve the Director of responsibility for the administration of such functions. The Administrator shall serve as principal adviser to the Director on Federal information policy[.] *and shall report to the Director through the Deputy Director for Management and Finance.*

* * * * * * *

§ 3504. Authority and functions of the Director

* * * * * * *

(a) The Director shall develop and implement Federal information policies, principles, standards, and guidelines and shall provide direction and oversee the review and approval of information collection requests, the reduction of the paperwork burden, Federal statistical activities, records management activities, privacy *and security* of records, decision support activities, [interagency] *agency* sharing *and dissemination* of information, and acquisition and use of automatic data processing, telecommunications, and other *information* technology for managing information resources. The authority *of the Director* under this section shall be exercised consistent with applicable law.

* * * * * * *

(d) The statistical policy and coordination functions of the Director shall include—

(1) developing *and periodically reviewing and, as necessary, revising* loan-range plans for the improved *coordination and* performance of [Federal] *the* statistical activities and programs *of the Federal Government*;

(2) reviewing budget proposals of agencies to assure that the proposals are consistent with such long-range plans;

[2] *(3)* coordinating, through the review of budget proposals and as otherwise provided in this chapter, the functions of the Federal Government with respect to gathering, interpreting, and disseminating statistics and statistical information;

[3] *(4)* developing and implementing Government-wide policies, principles, standards, and guidelines concerning statistical collection procedures and methods, statistical data classification, statistical information presentation and dissemination[;], *and such statistical data sources as may be required for the administration of Federal programs*;

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(5) evaluating statistical program performance and agency compliance with Government-wide policies, principles, standards, and guidelines;

* * * * * * *

(E) develop and annually revise, in consultation with the Administrator of General Services, a five-year plan for meeting the automatic data processing, telecommunications, and other information technology needs of the Federal Government in accordance with the requirements of sections 110 and 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 757, 759) and the purposes of this chapter; and

(F) submit to the President and the Congress legislative proposals to remove inconsistencies in laws and practices involving privacy, confidentiality, and disclosure of information[.];

(4) upon the enactment of the Federal Management Reorganization and Cost Control Act of 1986—

(A) set a goal to reduce, by September 30, 1987, the burden of Federal collections of information existing on September 30, 1986, by at least 5 per centum; and

(B) for the fiscal year beginning on October 1, 1987, and each of the next three fiscal years, set a goal to reduce the burden of Federal collections of information existing at the end of the immediately preceding fiscal year by at least 5 per centum;

(5) maintain a comprehensive set of information resources management policies; and

(6) within one year after the date of enactment of the Federal Management Reorganization and Cost Control Act of 1986—

(A) issue, in consultation with the Administrator of General Services, principles, standards, and guidelines to implement the policies described in paragraph (5);

(B) report to the Congress on the feasibility and means of enhancing public access, including access by electronic media, to information relating to information collection requests required by this chapter to be made available to the public; and

(C) identify further initiatives to reduce the burden of Federal collections of information associated with the administration of Federal grant programs.

* * * * * * *

§ 3506. Federal agency responsibilities

* * * * * * *

(c) Each agency shall—

[(1) systematically inventory its major information systems and periodically review its information management activities, including planning, budgeting, organizing, directing, training, promoting, controlling, and other managerial activities involving the collection, use, and dissemination of information;]

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(1) systematically inventory its major information systems and periodically review its information resources management activities;

* * * * * * *

(4) assign to the official designated under subsection (b) the responsibility for the conduct of and accountability for any acquisitions made pursuant to a delegation of authority under section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759); [and]

(5) ensure that information collection requests required by law or to obtain a benefit, and submitted to nine or fewer persons, contain a statement to inform the person receiving the request that the request is not subject to the requirements of section 3507 of this chapter[.] *; and*

(6) implement applicable Government-wide and agency information policies, principles, standards, and guidelines with respect to information collection, paperwork reduction, statistical activities, records management activities, privacy and security of records, decision support activities, sharing and dissemination of information, acquisition and use of information technology, and other information resource management functions;

(7) periodically evaluate and, as needed, improve, the accuracy, completeness, and reliability of data and records contained within Federal information systems; and

(8) develop and annually revise a five-year plan, in accordance with appropriate guidance provided by the Director, for meeting the agency's information technology needs.

* * * * * * *

§ 3507. Public information collection activities—submission to Director; approval and delegation

* * * * * * *

(1) * * *

(2) the agency (A) has submitted to the Director the proposed information collection request, copies of pertinent regulations and other related materials as the Director may specify, and an explanation of actions taken to carry out paragraph (1) of this subsection, and (B) has prepared a notice to be published in the Federal Register stating that the agency has made such submission *and setting forth a title for the information collection request, a brief description of the likely respondents and proposed frequency of response to the information collection request, and an estimate of the burden that will result from the information collection request; and*

* * * * * * *

§ 3511. Establishment and operation of Federal Information Locator System

(a) There is established in the Office of Information and Regulatory Affairs a Federal Information Locator System (hereafter in this section referred to as the 'system') which shall be composed of a directory of information resources, a data element dictionary, and an information referral service. The system shall serve as the

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authoritative register of all information collection requests[.], *and shall be designed so as to assist agencies and the public in locating existing Government information derived from information collection requests.*

* * * * * * *

§ 3514. Responsiveness to Congress

(a) The Director shall keep the Congress and its committees fully and currently informed * * *

(7) A list of all violations of provisions of this chapter and rules, regulations, guidelines, policies, and procedures issued pursuant to this chapter; [and]

(8) with respect to recommendations of the Commission on Federal Paperwork—

(A) a description of the specific actions taken on or planned for each recommendation;

(B) a target date for implementing each recommendation accepted but not implemented; and

(C) an explanation of the reasons for any delay in completing action on such recommendations[.];

(9)(A) a summary of accomplishments in the improvement of, and planned initiatives to improve, Federal information resources management within agencies;

(B) a detailed statement with respect to each agency of new initiatives to acquire information technology to improve such management; and

(C) an analysis of the extent to which the policies, principles, standards, and guidelines issued and maintained pursuant to paragraphs (5) and (6) of section 3505 of this title promote or deter such new initiatives; and

(10) with respect to the statistical policy and coordination functions described in section 3504(d) of this title—

(A) a description of the specific actions taken, or planned to be taken, to carry out each such function;

(B) a description of the status of each major statistical program, including information on—

(i) any improvements in each such program;

(ii) any program which has been reduced or eliminated; and

(iii) the budget for each such program for the previous fiscal year and the fiscal year in progress and the budget proposed for each such program for the next fiscal year; and

(C) a description and summary of the long-range plans currently in effect for the major Federal statistical activities and programs.

(b) At the time the President submits the budget for fiscal year 1988 or any succeeding fiscal year under section 1105 of title 31, the Director shall submit a report to the President of the Senate and the Speaker of the House of Representatives, providing—

(1) a description of the funds requested in the budget for such fiscal year for each of the following information resources management functions required by this chapter:

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(A) paperwork and regulatory review;

(B) general information policy, records management, and privacy and Federal disclosure policy;

(C) statistical policy;

(D) automatic data processing and telecommunications policy; and

(E) administrative and other functions; and

(2) a description of the allocation of the funds available to the Office of Information and Regulatory Affairs for such functions in the preceding fiscal year.

(c) [(b)] The preparation of any report required by this section shall not increase the collection of information burden on persons outside the Federal Government.

* * * * * * *

§ 3520. Authorization of appropriations

[There are hereby authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose, sums—

[(1) not to exceed $8,000,000 for the fiscal year ending September 30, 1981;

[(2) not to exceed $8,500,000 for the fiscal year ending September 30, 1982; and

[(3) not to exceed $9,000,000 for the fiscal year ending September 30, 1983.

(Added Pub. L. 96-511, § 2(a), Dec. 11, 1980, 94 Stat. 2825.)]

There are authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose—

(1) $9,000,000 for the fiscal year ending September 30, 1987;

(2) $9,500,000 for the fiscal year ending September 30, 1988;

(3) $10,000,000 for the fiscal year ending September 30, 1989;

(4) $10,500,000 for the fiscal year ending September 30, 1990.

* * * * * * *

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

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[FEDERAL TELECOMMUNICATION FUNDS

[SEC. 110. There is hereby authorized to be established on the books of the Treasury, a Federal telecommunications fund, which shall be available without fiscal year limitation for expenses, including personal services, other costs, and the procurement by lease or purchase of equipment and operating facilities (including cryptographic devices) necessary for the operation of a Federal telecommunications system, to provide local and long distance voice, teletype, data, facsimile, and other communication services. There are authorized to be appropriated to said fund such sums as may be required which, together with the value, as determined by the Administrator, of supplies and equipment from time to time transferred to the Administrator under authority of section 205(f), less any liabilities assumed, shall constitute the capital of the fund: *Provided,* That said fund shall be credited with (1) advances and reimbursements from available appropriations and funds of any agency (including the General Services Administration), organization, or persons for telecommunication services rendered and facilities made available thereto, at rates determined by the Administrator to approximate the costs thereof met by the fund (including depreciation of equipment, provision for accrued leave, and where appropriate, for terminal liability charges and for amortization of installation costs, but excluding, in the determination of rates prior to the fiscal year 1966, such direct operating expenses as may be directly appropriated for, which expenses may be charged to the fund and covered by advances or reimbursements from such direct appropriations) and (2) refunds or recoveries resulting from operations of the fund, including the net proceeds of disposal of excess or surplus personal property and receipts from carriers and others for loss of or damage to property: *Provided further,* That following the close of each fiscal year any net income, after making provision for prior year losses, if any, shall be transferred to the Treasury of the United States as miscellaneous receipts.]

INFORMATION TECHNOLOGY FUND

SEC. 110. (a)(1) There is established on the books of the Treasury an Information Technology Fund (hereinafter referred to as the "Fund", which shall be available without fiscal year limitation. There are authorized to be appropriated to the Fund such sums as may be required. For purposes of subsection (b), the Fund shall consist of—

(A) the capital and assets of the Federal telecommunications fund established under this section (as in effect on December 31, 1986, which are in such fund on January 1, 1987;

(B) the capital and assets which are in the automatic data processing fund established under section 111 of this Act (as in effect on December 31, 1986) which are in such fund on January 1, 1987; and

(C) the supplies and equipment transferred to the Administrator under sections 111 and 205(f) of this Act, subject to any liabilities assumed with respect to such supplies and equipment.

(2) The Administrator shall determine the cost and capital requirements of the Fund for each fiscal year and shall submit plans

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concerning such requirements and such other information as may be requested for the review and approval of the Director of the Office of Management and Budget. Any change to the cost and capital requirements of the Fund for a fiscal year shall be made in the same manner as provided by this section for the initial fiscal year determination. If approved by the Director, the Administrator shall establish rates to be charged agencies provided, or to be provided, information technology resources through the Fund consistent with such approvals. Such cost and capital requirements may include funds—

(A) needed for the purchase (if the Administrator has determined that purchase is the least costly alternative) of information processing and transmission equipment, software, systems, and operating facilities necessary for the provision of such services;

(B) resulting from operations of the Fund, including the net proceeds of disposal of excess or surplus personal property and receipt from carriers and others for loss or damage to property; and

(C) which are appropriated, available under subsection (c), authorized to be transferred, or otherwise made available to the Fund.

(b) The Fund shall—

(1) assume all of the liabilities, obligations, and commitments of the funds described in subparagraphs (A) and (B), of subsection (a)(1); and

(2) be available for expenses, including personal services and other costs, and for procurement (by lease, purchase, transfer, or otherwise) for efficiently providing information technology resources to Federal agencies and for the efficient management, coordination, operation, and utilization of such resources.

(c)(1) In the operation of the Fund, the Administrator is authorized to enter into multiyear contracts for the provision of information technology hardware, software, or services for periods not in excess of five years, if—

(A) funds are available and adequate for payment of the costs of such contract for the first fiscal year and any costs of cancellation or termination;

(B) such contract is awarded on a fully competitive basis; and

(C) the Administrator determines that—

(i) the need for the information technology hardware, software, or services being provided will continue over the period of the contract;

(ii) the use of the multiyear contract will yield substantial cost savings when compared with other methods of providing the necessary resources; and

(iii) such a method of contracting will not exclude small buiness participation.

(2) Any cancellation costs incurred with respect to a contract entered into under this subsection shall be paid from currently available funds in the Fund.

(3) This subsection shall not be construed to limit the authority of the Administrator to procure equipment and services under section 201 of this Act.

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(d) Following the close of each fiscal year, the uncommitted balance of any funds remaining in the Fund, after making provision for anticipated operating needs, as detrermined by the Office of Management and Budget, shall be transferred to the general fund of the Treasury as miscellaneous receipts.

(e) A report on the operation of the Fund shall be made annually by the Administrator to the Director of the Office of Management and Budget. Such report shall identify any proposed increases to the capital of the Fund and shall include a report on information processing equipment inventory, utilitization, and acquisitions.

[(g)] *(f) For the purposes of this section, the term "information technology resources" includes any service or equipment which had been authorized to be acquired or provided by this section or section III of this Act (as in effect on December 31, 1986), and other information processing and transmission equipment, software, systems, operating facilities, supplies, and services related thereto, and maintenance and repair thereof. Section III of this Act shall continue to apply to the provision of automatic data processing equipment.*

AUTOMATIC DATA PROCESSING EQUIPMENT

SEC. 111. (a) The Administrator is authorized and directed to coordinate and provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment by Federal agencies.

(b)(1) Automatic data processing equipment suitable for efficient and effective use by Federal agencies shall be provided by the Administrator through purchase, lease, transfer of equipment from other Federal agencies, or otherwise, and the Administrator is authorized and directed to provide by contract or otherwise for the maintenance and repair of such equipment. In carrying out his responsibilities under this section the Administrator is authorized to transfer automatic data processing equipment between Federal agencies, to provide for joint utilization of such equipment by two or more Federal agencies, and to establish and operate equipment pools and data processing centers for the use of two or more such agencies when necessary for its most efficient and effective utilization.

(2) The Administrator may delegate to one or more Federal agencies authority to operate automatic data processing equipment pools and automatic data processing centers, and to lease, purchase, or maintain individuals automatic data processing systems or specific units of equipment, including such equipment used in automatic data processing pools and automatic data processing centers, when such action is determined by the Administrator to be necessary for the economy and efficiency of operations, or when such action is essential to national defense or national security. The Administrator may delegate to one or more Federal agencies authority to lease, purchase, or maintain automatic data processing equipment to the extent to which he determines such action to be necessary and desirable to allow for the orderly implementation of a program for the utilization of such equipment.

[(c) There is hereby authorized to be established on the books of the Treasury an automatic data processing fund, which shall be

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available without fiscal year limitation for expenses, including personal services, other costs, and the procurement by lease, purchase, transfer, or otherwise of equipment, maintenance, and repair of such equipment by contract or otherwise, necessary for the efficient coordination, operation, utilization of such equipment by and for Federal agencies: *Provided,* That a report of equipment inventory, utilization, and acquisitions, together with an account of receipts, disbursements, and transfers to miscellaneous receipts, under this authorization shall be made annually in connection with the budget estimates to the Director of the Bureau of the Budget and to the Congress, and the inclusion in appropriation acts of provisions regulating the operation of the automatic data processing fund, or limiting the expenditures therefrom, is hereby authorized.

[(d) There are authorized to be appropriated to said fund such sums as may be required which, together with the value, as determined by the Administrator, of supplies and equipment from time to time transferred to the Administrator, shall constitute the capital of the fund: *Provided,* That said fund shall be credited with (1) advances and reimbursements from available appropriations and funds of any agency (including the General Services Administration), organization, or contractor utilizing such equipment and services, rendered them, at rates determined by the Administrator to approximate the costs thereof met by the fund (including depreciation of equipment, provision for accrued leave, and for amortization of installment costs, but excluding, in the determination of rates prior to the fiscal year 1967, such direct operating expenses as may be directly appropriated for, which expenses may be charged to the fund and covered by advances or reimbursements from such direct appropriations) and (2) refunds or recoveries resulting from operations of the fund, including the net proceeds of disposal of excess or surplus personal property and receipts from carriers and others for loss of or damage to property: *Provided further,* That following the close of each fiscal year any net income, after making provisions for prior year losses, if any, shall be transferred to the Treasury of the United States as miscellaneous receipts.]

[(e)] *(c)* The proviso following paragraph (4) in section 201(a) of this Act and the provisions of section 602(d) of this Act shall have no application in the administration of this section. No other provisions of this Act or any other Act which is consistent with the provisions of this section shall be applicable in the administration of this section.

[(f)] *(d)* The Secretary of Commerce is authorized (1) to provide agencies, and the Administrator of General Services in the exercise of the authority delegated in this section, with scientific and technological advisory services relating to automatic data processing and related systems, and (2) to make appropriate recommendations to the President relating to the establishment of uniform Federal automatic data processing standards. The Secretary of Commerce is authorized to undertake the necessary research in the sciences and technologies of automatic data processing computer and related systems, as may be required under provisions of this subsection.

[(g)] *(e)* The authority conferred upon the Administrator and the Secretary of Commerce by this section shall be exercised subject to direction by the President and to fiscal and policy control

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exercised by the Bureau of the Budget. Authority so conferred upon the Administrator shall not be so construed as to impair or interfere with the determination by agencies of their individual automatic data processing equipment requirements, including the development of specifications for and the selection of the types and configurations of equipment needed. The Administrator shall not interfere with, or attempt to control in any way, the us made of automatic data processing equipment or components thereof by any agency. The Administrator shall provide adequate notice to all agencies and other users concerned with respect to each proposed determination specifically affecting them or the automatic data processing equipment or components used by them. In the absence of mutual agreement between the Administrator and the agency or user concerned, such proposed determinations shall be subject to review and decision by the Bureau of the Budget unless the President otherwise directs.

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TITLE 44—PUBLIC PRINTING AND DOCUMENTS

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(g) The Federal automatic data processing and telecommunications functions of the Director shall include—

(1) developing and implementing policies, principles, standards, and guidelines for automatic data processing and telecommunications functions and activities of the Federal Government, and overseeing the establishment of standards under section [111(f)] *(111(d)* of the Federal Property and Administrative Services Act of 1949;

(2) monitoring the effectiveness of, and compliance with, directives issued pursuant to sections 110 and 111 of such Act of 1949 and reviewing proposed determinations under section [111(g)], *111(e)* of such Act;

* * * * * * *

THE FEDERAL PAPERWORK REDUCTION ACT OF 1980

* * * * * * *

§ 3(b) [section 111] *sections 110 and 111*

* * * * * * *

(6) integrating the functions described in paragraphs (1) through (5) of this subsection with the other information resources management functions specified in this chapter; and

(7) appointing a chief statistician who is a trained and experienced professional statistician to carry out the functions described in paragraph (1) through (5) of this subsection.

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§ 3505. Assignment of tasks and deadlines

In carrying out the functions under this chapter, the Director shall—

(1) * * *

* * * * * * *

(2) within one year after the effective date of this Act—

(A) * * *

* * * * * * *

(E) identify initiatives which may achieve a 10 per centum reduction in the burden of Federal collections of information associated with the administration of Federal grant programs; [and]

* * * * * * *

(3) within two years after the effective date of this Act—

(A) * * *

[(E) develop, in consultation with the Administrator of General Services, a five-year plan for meeting the automatic data processing and telecommunications needs of the Federal Government in accordance with the requirements of section 111 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759) and the purposes of this chapter, and]

TITLE 26

INTERNAL REVENUE CODE

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Subtitle F—Procedure and Administration

* * * * * * *

§ 6103. Confidentiality and disclosure of returns and return information

(a) **General rule.**—Returns and return information shall be confidential, and except as authorized by this title—

* * * * * * *

(m) **Disclosure of taxpayer identity information.—**

(1) **Tax refunds.**—The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

(2) **Federal claims.—**

(A) **In general.**—Except as provided in subparagraph (B), the Secretary may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against

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the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31, *and other statutory authorities granting agencies independent claims collection authority.*

(B) **Special rule for consumer reporting agency.**—In the case of an agent of a Federal agency which is a consumer reporting agency (within the meaning of section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))), the mailing address of a taxpayer may be disclosed to such agent under subparagraph (A) only for the purpose of allowing such agent to prepare a commercial credit report on the taxpayer for use by such Federal agency in accordance with sections 3711, 3717, and 3718 of title 31.

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APPENDIX

Memorandum of Understanding for Financing Federal Assistance Programs

This is to confirm agreements reached by the Joint State/Federal Cash Management Reform Task Force. The agreements include the attached cash management policies and are intended to achieve an equitable system of intergovernmental cash management.

We agree to work toward acceptance by and implementation of these policies in the State and Federal Governments. This includes:

Pursuing resolutions at meetings of major State groups (i.e., NASBO and NASACT) endorsing the cash management policies;

Initiating the necessary changes to implement the policies in the Federal agencies; and

Undertaking, as soon as possible, pilot tests of the various funding alternatives provided by the policies, involving an appropriate number of States, Federal agencies, and programs.

It is agreed that the pilot tests will:

Begin as soon as possible and last no more than six months, and will include an appropriate number of Federal programs;

Examine the viability of the various proposed funding options, including:

Checks paid letter of credit.

Estimated checks cleared letter of credit (Delay of Draw).

Checks issued letter of credit with interest paid or credited (using, for example, the Separate Bank Account or Day of Disbursement method).

Determine equitable methods for providing for administrative and start-up costs attributable to the specific cash management practices being implemented; and

Serve as the first test of actual implementation of the proposed policies in the State and Federal Governments.

It is understood that States currently on the Delay of Draw method will continue using this method until they implement one of the funding methods provided for by the attached cash management policies. It is understood that Federal agencies will not proceed to expand use of the Delay of Draw method unless requested by a State.

If the results of the pilot tests are mutually satisfactory, it is further understood that the individual States will decide on and begin implementing a funding method, or methods, as soon as possible after the conclusion of the pilot tests.

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John F. Rogan (Wisconsin), State Finance Director; Richard Standiford (New Jersey), Deputy Director, Division of Budget and Accounting; Edward A. Mazur (Virginia), Comptroller, Department of Accounts; Julian Ridlen (Indiana), State Treasurer; F. Arnold Schuler (California), Deputy State Controller; James F. Kelly, Deputy Associate Director, Management Reform, Office of Management and Budget; John J. Lordan, Deputy Associate Director, Finance and Accounting, Office of Management and Budget; William M. Henderson, Director, Cash Management, Office of Management and Budget; Russell Morris, Assistant Commissioner, Banking and Cash Management, Department of the Treasury; David V. Dukes, Deputy Assistant Secretary, Finance, Department of Health and Human Services.

Attachment.

INTERGOVERNMENTAL CASH MANAGEMENT POLICIES FOR FINANCING FEDERAL ASSISTANCE PROGRAMS

1. There shall be a set of Government-wide cash management policies and practices that govern all exchanges of funds between Federal and State Governments.

2. Intergovernmental cash management practices should be such that neither the Federal nor State Governments benefit financially or suffer financially as a result of the transfer of cash in support of Federal assistance programs.

3. It is understood that the Federal Government is entitled to earnings on cash provided by the Federal Government to a State government prior to the time such cash is needed to redeem a warrant, a check, or payment by other means. It is also understood that a State government is entitled to earnings on cash advanced by such State government to redeem a warrant, a check, or payment by other means, prior to reimbursement by the Federal Government on programs for which Federal payment is required.

4. The Federal Government shall make grant allocations and awards in such a manner and in such amounts to assure that funds are adequate to meet State cash disbursement issuance requirements.

5. States shall bill based on actual cash disbursement needs or a close approximation of expected cash disbursement needs (plus the allowance for depreciation, amortization, and overhead costs, as approved in accordance with OMB Circular A–87).

6. Due to the variety of constitutional, statutory, and administrative restrictions existing among the 50 States, several techniques for transferring cash between Federal agencies and State governments shall be made available for selection by each State. These techniques are:

a. Checks paid letter of credit.

b. Estimated checks cleared letter of credit (Delay of Draw).

c. Checks issued letter of credit with interest paid or credited (using, for example, the Separate Bank Account or Day of Disbursement method).

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7. States selecting the checks issued letter of credit with interest paid or credited option shall:

Draw down Federal funds as close as possible to the time of issuance of warrants, checks, or payments by other means.

Pay or credit the U.S. Treasury interest on the balance of Federal cash in banks/State treasuries based on the Federal funds rate; the specific rate and method to be determined.

8. Since the checks issued letter of credit with interest paid or credited option is new, there should first be a pilot test in three or four States in order to resolve any initial procedural or operational matters that may arise.

9. The Federal Government is willing to work with the States and State organizations to consider other financing systems or methods proposed by the States as long-range or future alternatives.

10. The Federal Government shall pay to or credit the appropriate State Treasury interest on the balance of State cash advanced on Federal programs based on the Federal funds rate; the specific method and rate to be determined.

11. Whenever feasible, each State and the concerned Federal agencies shall implement a single cash management technique for all Federal programs in which the State is participating.

12. Federal agencies and each State government will move as quickly as possible to adopt the technique(s) chosen by each State.

13. All transfers of funds between the States and the Federal Government shall be accomplished by wire transfer to ensure quick delivery of funds.

14. Where Federal statutes require reimbursement, the Federal Government shall revise regulations or administrative procedures to ensure that cash is transferred as closely as possible to the time that States make disbursements.

15. States will apply sound businesslike practices when disbursing Federal funds to secondary recipients and contractors, and not disburse or handle such cash at a faster rate or in a different manner than it handles its own cash.

16. For Supplemental Security Income State supplement payments, the same cash management principles shall be followed, except the State will be considered the disbursing agent and the Federal Government the payee.

17. Each State will designate a specific State official(s) (name and title) with the statutory or administrative authority to coordinate all State agencies to review, approve, and/or enter into an agreement with the U.S. Government for the purpose of implementing these cash management policies.

CHECKS PAID LETTER OF CREDIT

Description

Grantee is provided an irrevocable letter of credit to establish a separate zero-balance bank account in a commercial bank. Grantee issues warrants or checks for program purposes against the account, which are processed according to normal banking procedures.

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At a predetermined time each day, the commercial bank totals the checks presented against the zero-balance account that day; telephones the district Federal Reserve or branch; and relays the name of the grantee for which it is drawing funds, the letter of credit number, and the amount of Federal funds needed that day. The Federal Reserve Bank verifies and obtains approval for the request. It then credits the commercial bank's reserve account the same day with a book entry, which in effect transfers the funds from its reserve account to the grantee's account. This enables the grantee to maintain the account with a zero balance at the end of each bank day.

The commercial bank normally requires a compensatory balance or payment of fees for handling the zero balance account.

ESTIMATED CHECKS CLEARED LETTER OF CREDIT SYSTEM (DELAY OF DRAW)

Description

The State is provided a letter of credit which is irrevocable to the extent the State has obligated funds in good faith and accordance with the grant, contract, or other agreement for the execution of an authorized Federal program. A copy of the letter of credit is also given to the U.S. Treasury, authorizing the U.S. Treasury to make payments to the State upon demand from operating accounts maintained by the U.S. Treasury at the Federal Reserve Bank, subject to dollar limits indicated on the letter of credit.

The State issues checks or warrants for program purposes against its operating account. The checks or warrants are processed according to normal banking procedures. Using historical warrant/check clearance patterns, the State requests its commercial bank, as often as daily, to initiate a request for funds to cover the checks or warrants it expects will be presented for payment the next business day.

The bank sends a message by wire to Treasury indicating the name of the State, the amount requested, and the letter of credit number. The Treasury and the program agency review and verify the request for funds. Within 24 hours of the request, the Treasury wire transfers immediately available funds to the commercial bank for credit to the account of the State.

CHECKS ISSUED LETTER OF CREDIT SYSTEM WITH INTEREST PAID OR CREDITED (SEPARATE BANK ACCOUNT)

Description

State is provided a letter of credit which is irrevocable to the extent the State has obligated funds in good faith and in accordance with the grant, contract, or other agreement for the execution of an authorized Federal program. A copy of the letter of credit is also given to the U.S. Treasury, authorizing the U.S. Treasury to make payments to the State upon demand from operating accounts maintained by the U.S. Treasury at the Federal Reserve Bank, subject to dollar limits indicated on the letter of credit.

The State instructs its bank, as often as daily, to initiate a request for funds immediately preceding the issuance of warrants or

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checks for program purposes. The bank sends a message by wire to Treasury stating the name of the State, the amount requested, and the letter of credit number. The Treasury and the program agency review and verify the request for funds. Within 24 hours of the request, the Treasury wire transfers immediately available funds to the commercial bank for credit to the account designated by the State. Interest is credited to the Federal Government by the bank monthly on the average daily balance in the account at the Federal funds rate.

When Federal/State matching funds are involved, there are a number of options available for consideration:

1. State may issue checks/warrants directly against the separate account for only the Federal share of program costs.
2. State may issue checks/warrants directly against the separate account for both the Federal and State shares, provided that the State transfers the State share to the separate account on the same day the checks/warrants are presented to the account for payment.
3. State may issue checks/warrants against its own account for both the Federal and State shares and transfer the Federal share to the State account on the same day the checks/warrants are presented to the account for payment.
4. State may issue checks/warrants against either the State or Federal account up to that percentage of the total value of warrants which corresponds to the State or Federal matching percentage share for a program. For example, if a State issued a total of $300 in warrants for a program in which the Federal Government paid 90% of the costs with the State matching 10%, the State could then issue warrants totaling $270 against the Federal account and $30 against the State account.

CHECKS ISSUED LETTER OR CREDIT WITH INTEREST PAID OR CREDITED (DAY OF DISBURSEMENT) (BY STATE)

Description

The State would be provided a letter of credit which is irrevocable to the extent that the State has obligated funds in good faith and in accordance with the grant, contract, or other agreement for the execution of an authorized Federal program. A copy of the letter of credit is also given to the U.S. Treasury, authorizing the U.S. Treasury to make payments to the State upon demand from operating accounts maintained by the U.S. Treasury at the Federal Reserve Bank, subject to dollar limits indicated on the letter of credit.

On the day of disbursement, rather than either before or after the fact, the State would request the transfer of funds into any bank/State treasury account it might designate. The day of disbursement is defined as the day that is as close as possible to the time needed by the State for the issuance of warrants, checks, or payments by other means.

Under the "day of disbursement—by State" method, the State would pay or credit the U.S. Treasury with interest on Federal funds held in the State bank/State treasury accounts for a negotiated average number of days, representing the average number of days from the day funds were received in the State's bank/State

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treasury account until the day that cash was required to redeem the State's warrant, check, or payment by other means.

Interest would be calculated annually, based on the total value of Federal funds during the State's entire fiscal year, multiplied by the above predetermined and negotiated average number of days that the cash was held, times a predetermined and agreed-upon interest rate, less a reasonable administrative charge. The number of days used would, in part, be calculated using a predetermined and agreed-upon check clearance pattern and would assume that specific percentages of disbursements cleared the bank each day subsequent to the issuance of warrants, checks, or payments by other means.

Under the "day of disbursement—by State" method, the comparable interest costs to the State on Federally sponsored programs, where State funds must be disbursed prior to the receipt of Federal funds or where the Federal Government administers a joint Federal/State program, would be calculated and netted against any interest amounts owed to the Federal Government. The net interest due to or owed by the Federal Government would be transmitted or billed to them on a predetermined frequency, preferably annually, after the close of the State's fiscal year.

It should be noted that the desirability of this method stems from the facts that: (a) check clearance patterns are determined on a basis that has already been determined to be acceptable by the Federal Government; (b) one set of check clearance patterns may be developed for the entire State, thereby enabling existing systems and procedures to continue; (c) interest rates would be obtained from some readily available published source, and therefore should result in a non-complex methodology for their application; and (d) Federal and State Government activity would be subject to audit by both State and Federal auditors and could include sanctions to encourage compliance.

Since the objective of considering various Federal/State cash management alternatives is to achieve equity with regard to the use of Federal and State funds, all predetermined items, including check clearance patterns and interest rates, would be subject to annual renegotiation. These items, together with the State's actual performance in drawing down Federal funds or the Federal Government's performance in remitting payments after State funds have been expended or its performance in expending State funds which the Federal Government administers, would be subject to periodic audit and compliance testing.

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ADDITIONAL VIEWS OF SENATOR LAWTON CHILES

Title VI of S. 2230 contains language which reauthorizes funds for the Office of Information and Regulatory Policy and which provides needed amendments to the Paperwork Reduction Act of 1980. The provisions of title VI as amended by the Committee are similar to the provisions of S. 2433, a bill in the 98th Congress which Senator Danforth and I sponsored and which this Committee passed on a unanimous vote of 16 to 0. (Senate Report 98–576.)

At the time of the Committee's action in the 98th Congress I provided additional views on amendments undertaken, supported, and passed by the Committee in which I had a specific role. I want to update and repeat those remarks for the purposes of the 99th Congress.

As I mentioned in my views in 1984, the reauthorization process by the Senate Committee on Governmental Affairs concentrated more upon what problems existed in the act's implementation since 1981 than upon what accomplishments were obtained. This is a proper focus for congressional oversight and congressional oversight is an essential part of the reauthorization process.

However, a perspective should be placed on the achievements. By the end of 1985 some 630 million hours of paperwork requests were eliminated. Time spent fulfilling paperwork requests is used as a proxy measure for cost. At $20 an hour, this amounts to a savings of some $12.6 billion. This savings in and of itself demonstrates the act has made a difference in how the Government works.

But as the experience of the past five years reveal and as the hearings by both the House and Senate document, there is much progress yet to be made if the management and accountability structure created by the 1980 act are to lead to the achievements envisioned by the framers of the Paperwork Act. As I have stated frequently, the ultimate test in my own mind will be when I can travel through Florida and get a sense from the people they feel Government's paperwork demands are not out of control. This still has not happened to me.

The biggest disappointments of the past five years concern efforts by the executive branch to frustrate both the opportunities for meaningful public participation and the mechanisms for accountability to the Congress and the public the law establishes.

What I sense now to a greater degree than two years ago is the extent to which these efforts have worked to erode the feeling of trust between the executive and legislative branches of Government, It is critical that this erosion be stopped and reversed. Several of the amendments contained in title VI are disigned to enhance public participation and accountability to Congress. I believe these amendments will go a long way to fulifilling the need.

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THE OFFICE OF LEGAL COUNSEL OPINION

The Committee amended the definition of "information collection request" to include the term "collection of information requirment," A term used in section 3504(H) in the act. This amendment clarifies what the term "collection of infomation requirment" was intended to mean when the act was passed in 1980. A specific intent of this amendment is to establish that the legal opinion issued by the Justice Department in June of 1982 provides an invalid interpretation of the law.

I have previously characterized this opinion as a flagrant example by unelected officials in the bowels of the Federal office building to rewrite and change a law passed by Congress and signed by the President. (Congressional Record, July 1, 1982.) It is an opinion which serves to distort and change the congressional intent expressed in the Paperwork Reduction Act. Moreover, the opinion causes more problems that it purports to solve.

According to the opinion, its conclusion is based on, among other things, a thorough analysis "* * * of the language and history of section 3504(H), the language and history of the act's other provisions, and the statute's general scheme * * *". The clarifying amendment to the definition of information collection request makes clear that not only did the opinion reach a false conclusion, it also was based on a selective and false analysis of language and legislative history. Despite its 56 pages, and 101 footnotes, the analysis of the opinion is so flawed, it should not be relied upon for any future efforts to interpret the statute.

The opinion misconstrues the general scheme of the statute. The law was intended to be comprehensive in its coverage of federally sponsored "collections of information." Exemptions to this coverage, either by agency or by class of information were specifically set out in the definitions of section 3502 or the savings provisions of section 3518. The notion the law was dedicated primarily to "Forms, questionnaires, and surveys" and not to other instruments such as reporting, recordkeeping, and disclosure requirements which are means to carry out federally "sponsored collections of information" is a fundamental misreading of what the law states, what the Congress of 1980 intended, and what this Committee affirms in the amendments of 1986 contained in title VI of S. 2230.

The opinion does not reflect a thorough analysis of either the language or the legislative history of the act's provisions. It is a limited and selective analysis. The scholarship reflected by the analysis is deficient. The following aspects of the legislative history which were not included in the OLC opinion should be considered in any future interpretations of the act.

1. The Congress used the reports and work of the Federal Paperwork Commission in drafting the law. The Commission's reports on the "history of paperwork reforms" and on the "reports clearance process" specifically instructed the Congress on the legal and policy issues associated with the responsibilities contained in the Federal Reports Act and the Administrative Procedure Act. (The OLC opinion did not acknowledge any relationship betwen the Commission's work and the drafting of the act.)

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2. The Paperwork Reduction Act of 1980 amended the Federal Reports Act of 1942. The Administrative Procedure Act was passed in 1946. These two laws had co-existed for some 30 years. What the history was and, most importantly, what the prevailing practice of the executive branch, the General Accounting Office, and independent regulatory commissions were in regards to the laws were known to the Congress when the Paperwork Act was deliberated upon. Much of the language of the 1942 law was deliberately incorporated in the Paperwork Reduction Act in order to preserve the traditional understandings of the authority contained in the 1942 law. (The OLC opinion made no reference to the prevailing practice or understanding of the agencies, the Comptroller General, or the Director of OMB.)

3. In 1973 the Congress amended the Federal Reports Act and required the General Accounting Office to be responsible for clearing the information requests of independent regulatory commissions. The amendment was motivated by a concern over the integrity of the rulemaking process. (How the 96th Congress studied the issues raised and responded to the concern of Congress reflected by the 1973 amendment was ignored by the OLC opinion.)

4. The language of section 3504(h) was part of an amendment proposed by Senator Kennedy and accepted and introduced by myself during full Senate consideration of the act. Senator Kennedy's amendment included amendments to other sections of the act, including section 3507 wherein substantive language was added requiring all decisions of the Director of OMB to be made publicly available. (The OLC opinion construed Senator Kennedy's amendment and explanatory comments to relate only to the language of 3504(H). This is inaccurate.)

5. The most definitive statement on the relationship of section 3504(H) and information collection requirements to the procedural requirements of other sections of the act upon information collection requests was made by Senator Kennedy on December 15, 1980. (Congressional Record, December 15, 1980, S 16700.) (The OLC opinion does not acknowledge this explanation.)

Federal agencies will continue to try to find ways, including unfounded interpretations of what Congress intended, to limit the scope of the Paperwork Act's requirements and assurances the law is intended to provide the public. The Committee's amendment to the definition of information collection request exposes the attempt which culminated in the OLC opinion of June 1982.

SENATE CONFIRMATION OF THE ADMINISTRATOR OF THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS (OIRA)

The Committee amendment to require advise and consent of the Senate in the selection of the Administrator of OIRA is designed to strengthen accountability to Congress.

During development of the 1980 Paperwork Act the Senate agreed to President Carter's request to drop the idea of Senate confirmation of the head of OIRA in exchange for his support of a separate authorization and appropriation account for the office's activities. This administration chose not to abide by what I regard the language of the act to mandate. A separate appropriation ac-

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count consistent with the separate authorization has not as yet been created. In addition, the issue of how resources have been used and what resources are needed to accomplish the ambitious strategy Congress incorporated in the 1980 act has been a point of continuing contention between the administration and OIRA's oversight committees in the House and Senate.

The 1986 amendments will require Presidential appointment and Senate confirmation of the head of OIRA in the future. They retain the language which I believe mandates a separate appropriation account. They also require a reporting by function of how resources are to be used by OIRA which will be tied to the annual budget process. Accountability to Congress will be strengthened by these steps.

IMPROVEMENTS FOR PUBLIC PARTICIPATION

The amendment to section 3507(a)(2)(B) which requires agencies to set forth a title, a brief description of the need for the information and its proposed use, a description of the likely respondents and proposed frequency of response, and an estimate of the burden, is designed to enhance public participation in commenting upon proposed agency requests for information. Since approvals for continuing requests are required every 3 years, this minimum amount of information is particularly important if the affected public is to become a meaningful part of the justification process.

Prior to and shortly after the act's passage the OMB gathered agency notices, complete with the above information, and published them in the Federal Register under OMB auspices. This practice was dropped and agencies were left to their own descretion to meet the act's requirement to give notice in the Federal Register. Testimony from small businesses, individuals, universities, and State and local governments supports the idea that standardizing the requirements for minimal information will improve both the number and quality of comments.

While the Committee amendment does not specifically require OIRA to public agency notices, I do want to note that the House version of section 3507(a)(2)(B) in 1980 was amended by the Senate at the specific request of OMB. The request was to provide language which would enable all paperwork notices to be aggregated in one location in the Federal Register. At the time the view was that this approach made for more participation by the public in the comment process.

It is my hope that this standardization of what minimal information should be contained in the notices will lead to more thoughtful efforts by the agencies and OIRA to encourage public participation in the process of justifying agency requests.

The Committee amended section 3505 to include the task for the Director of OMB to report to the Congress in a year upon the feasibility and means of enhancing public access, including access by electronic media, to information relating to information collection requests required by the law to be made available to the public.

The administration agreed to this assignment after lengthy discussions on the need to improve public access to the decision making process surrounding agency justification and OIRA review

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of paperwork requirements. It is my view that with the explosion in computer and telecommunications technology, great strides can be made in improving the ease upon which persons can access the information relating to decisions on paperwork requirements which are publicly available. OIRA can seize this opportunity to demonstrate how new information technology can be used to expand meaningful public participation in how Government makes decisions concerning paperwork burdens. My hope is this opportunity will not be missed.

FEDERAL GRANT PROGRAMS—A MISSING INVENTORY OF PAPERWORK REQUIREMENTS

The Committee also amended section 3505 to require the Director of OMB identify further initiatives to reduce the burden of Federal collections of information associated with the administration of Federal grant programs.

The intent of this amendment is to continue specific statutory attention to paperwork demands associated with grant programs that was highlighted by section 3505(1)(E) of the 1980 act, which has expired.

My view is that there remains a large number of federally sponsored reporting and recordkeeping requirements associated with the management and audit of grants which has not been identified and subjected to the discipline of the Paperwork Reduction Act. A major area of requirements which has not been inventoried concerns reporting and recordkeeping demands that result form OMB's own circulars. Historically, OMB has taken the position that its circulars constitute policy guidance to the agencies and it is agency implementation of OMB's guidance which is subject to the clearance requirements of the act. Agencies have found this view easy to ignore. For many reporting and recordkeeping requirements which are established by the circulars, this position is inconsistent with the requirements of the act and inconsistent with the specific regulation the Director of OMB has promulgated to implement the act. (See 5 CFR Part 1320. 15(B).)

A result has been to confuse recipients of grant programs who seek the assurances of the public protection section of the act, and to premit agencies to find loopholes in the act's coverage.

Enclosed is recent corrrespondence between Director Miller and myself which concerns this very point in regards to OMB circular A-21. That circular regulates the documentation required of institutions of higher education who receive funds for federally sponsored research.

Circular A-21 has been controversial for some ten years and I have always believed the reporting and recordkeeping demands which flow from it should be subject to the discipline and requirements of the paperwork clearance process. I read Mr. Miller's response to be a commitment to see to it that the Paperwork Act requirements will be complied with in regards to the requirements which flow from A-21.

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I expect OIRA to follow up on this commitment on Circular A-21. All other OMB circulars which lead to collections of information should be examined for their practical utility as well.

LAWTON CHILES.

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U.S. SENATE,
Washington, DC, March 11, 1986.

Mr. JAMES MILLER,
Director, Office of Management and Budget,
Old Executive Office Building, Washington, DC.

DEAR JIM: The Chancellor of the State University System of Florida has brought to my attention your office's proposal in the February 12 Federal Register to change OMB Circular A-21. He indicates to me he has written to you as well.

As you know, the circular concerns governmentwide accounting principles for educational institutions who are engaged in federally sponsored research. The proposal announces that agencies will limit federal reimbursement for allocated administrative overhead to 26 percent by April 1, 1986; to 20 percent by April 1, 1987. The estimated savings are 100 million in fiscal year 1987, and over 200 million in fiscal year 1988.

Chancellor Reed's essential concern is the manner in which this policy change is being brought about. I am confident you agree the conduct of the federal government's overall relationship to institutions of higher education is an important aspect of our country's infrastructure for the conduct of basic research. Our foundation for basic research is an important factor in those things which contribute to our national security, a growth economy, and a national ability to compete in international markets.

While I understand one justification for this proposal is the need to respond to Congressional concerns, and another is the estimated budget savings. I do share the Chancellor's concern about the manner in which the federal government is pursuing this regulatory role and what it means for the future relationship between the government and the college and university community.

I am reminded this is not the first time the issue of changes to A-21 have arisen. I find myself asking questions similar to those I asked previous Directors of OMB almost a decade ago and repeatedly since. Recall that in your previous position as head of OIRA I had occasion to ask you just these sort of questions.

What is the relationship of the proposed change to A-21 to the need for OMB to comply with the Paperwork Reduction Act and its implementing regulations?

What is the relationship of the proposed change to Executive Order 12291 on Federal regulation? As a major architect of that Executive Order, you bring a unique expertise to that question.

A primary purpose behind both the Act and the Executive Order is to ensure the federal government examine its alterantives when undertaking a federal role. Despite previous assurances, I remain unconvinced that the requirements of the Paperwork Reduction Act have been complied with in implementing A-21. I find no burden estimates with either direct or indirect costs associated with reporting or recordkeeping burdens which flow from the circular. Given the public protection section of the law, the proposed change once again raises the serious consequences which result from any failure on the part of agencies to comply.

I also believe the proposed change is subject to the Executive Order on Federal regulation. The 100 and 200 million dolar saving

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I would appreciate your response to the two questions posed by Mr. Turnbull.

I am sure you have heard a great deal about the growing federal role in University activities. Both the broad issue of federal-University relationships and the specific issue of Circular A-21 were highlighted in Senate paperwork hearings before and after passage of the Paperwork Reduction Act in 1980. Interestingly, modifications to A-21 were a subject matter of the Subcommittee on Federal Spending Practices first paperwork hearing in June of 1978 and of its successor committee's last paperwork hearing in March of 1981. The A-21 effort reporting issue was specifically referred to your office for review as one of the burdensome demands listed to the Subcommittee on Federal Expenditures by the University community.

It is my firm opinion the reporting and recordkeeping burdens of the Circular are subject to the requirements of the Paperwork Reduction Act. Now that the Public Protection section is in effect, this point is critical. Presently, Circular A-21 does not display a control number.

It has also been my belief that consistent with both Presidents' Carter and Reagan Executive Orders on regulations, A-21 should be subjected to a regulatory analysis. To date the government does not have an estimate of what the compliance costs are for meeting the requirements of A-21, much less an assessment of what the relative costs of alternatives would be. To my knowledge, a regulatory analysis of A-21 has never been conducted.

Whether the Office of Management and Budget considers OMB circulars resulting in substantial economic consequences as regulations subject to the President's Executive Order on Regulations and whether OMB considers circulars which create collections of information subject to the requirements of the Paperwork Reduction Act are important policy questions. Regarding the University research community, I am confident the present A-21 discussion will not be the last time the question of whether a federally imposed burden is appropriate will occur. I believe that establishing a cost-effectiveness discipline is an important precedent to set. Certainly, that was a purpose of the Paperwork Reduction Act for reporting and recordkeeping requirements.

I would also appreciate the Administration's view on the relationship of OMB Circulars to Executive Order 12291 and the Paperwork Reduction Act.

With kind regards, I am

Most sincerely,

LAWTON CHILES.

Enclosure.

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LAWTON CHILES.

Enclosure.

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THE FLORIDA STATE UNIVERSITY,
Tallahassee, FL, February 24, 1982.

Senator LAWTON M. CHILES,
U.S. Senate,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR CHILES: Knowing of your continuing interest in governmental efficiency, especially as related to governmental paper work, I would like to raise a question on the current status of OMB Circular A-21 as it relates to the Paperwork Reduction Act of 1980. The *Federal Register* of January 7, 1982, contains a long-awaited and apparently useful revision of A-21. Universities and related research associations have long objected to the unreasonable requirements of A-21 and consequent demands of federal auditors acting under its structures. These resulted in a major paper work burden substantially counterproductive of accomplishing the missions of the universities and the objectives of the U.S. Government.

Accordingly, first reactions to the revised A-21 seem favorable. My university and others are preparing a detailed response which will probably praise the improvements while suggesting some additional refinements.

I would like to raise for your consideration, however, another point. Why has the revision of A-21 not been subjected to the provisions of P.L. 96-511, the Paperwork Reduction Act of 1980? The reporting requirements seem to fall under section 3502(4) and thus should bring A-21 under the explicit review provisions of the Act.

If the requirements of Circular A-21 are not so reviewed and the A-21 procedures possess neither the "control number" nor "state that the request is not subject to P.L. 3512," would a university be within its legal right to decline to maintain or provide the requested information as provided under section 3512 of the law?

It would be helpful to the Florida University to have an authoritative interpretation of these points.

Sincerely,

AUGUSTUS B. TURNBULL III,
Vice President for
Academic Affairs.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, April 14, 1982.

Hon. LAWTON CHILES,
U.S. Senate,
Washington, DC.

DEAR SENATOR CHILES: This is in response to your letter of March 15, 1982 which asked that we respond to two questions raised in a February 24 letter from Gus Turnbull of Florida State University and asked about the relationship of OMB Circulars to Executive Order 12291 and the Paperwork Reduction Act (P.L. 96-511).

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In his letter, Mr. Turnbull is specifically concerned about the applicability of the Paperwork Reduction Act to reporting and recordkeeping requirements contained in a recently proposed revision to OMB Circular No. A-21, "Cost Principles for Educational Institutions." The letter goes on to ask whether a university would be within its legal right to decline to maintain or provide information requested by the Circular, as provided under the public protection clause of the Paperwork Reduction Act of 1980 (44 USC 3512), since the A-21 procedures neither display a control number nor state that the request is not subject to the Act.

Circular No. A-21 establishes basic principles and requires agencies to implement those principles by establishing appropriate rules and procedures. In establishing such requirements the agencies have considerable latitude. The Circular does not explicitly require answers to identical questions by 10 or more members of the public. However, to the extent that the agencies' implementing regulations require reporting or recordkeeping subject to the Paperwork Reduction Act, they are required to be cleared. Accordingly, on August 21, 1980, we issued an instruction to each agency informing them that before they incorporate the principles of A-21 into their regulations, they had to have the information collection component reviewed and approved by OMB.

While the A-21 procedures do not display an OMB control number, agency implementing regulations which establish reporting or recordkeeping requirements should. In cases where they do not, it appears that the public protection clause of the Paperwork Reduction Act would apply.

Regarding your more general question about the relationship of OMB Circulars to P.L. 96-511 and E.O. 12291, Circulars are subject to the requirements of both. Each OMB Circular that calls for the collection of information involving answers to identical questions by 10 or more members of the public should and does undergo a Paperwork Reduction Act review. Furthermore, each OMB Circular (e.g., A-102 "Uniform Requirements for Grants to State and Local Governments") that requires agencies to obtain answers to identical questions has an OMB control number printed in the Circular where the requirement is set forth.

Under internal OMB procedures, proposed OMB Circulars are also reviewed for compliance with E.O. 12291 by my office. Any Circular designed to implement, interpret or prescribe law or policy or describe the procedure or practice requirements of an agency is subject to such a review (e.g., A-40 "Management of Federal reporting requirements"). Excluded from those requirements, however, are directives that outline procedures to be followed by the President's budget and legislative programs, or for matters affecting only the internal functions, management or personnel of Federal agencies (e.g., A-19, "Legislative coordination and clearance"). In a recent review of existing OMB Circulars, it was determined that twenty-three were covered by the Executive Order.

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I am pleased we could be of assistance on this matter. I look forward to a continued close working relationship as we move toward effective management of Federal information resources.

Sincerely,

CHRISTOPHER DEMUTH,
Administrator for Information and Regulator Affairs.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, June 4, 1986.

Hon. LAWTON CHILES,
U.S. Senate,
Washington, DC.

DEAR LAWTON: Thank you for you letter concerning the proposed revision of OMB Circular No. A-21, "Cost Principles for Educational Institutions."

As you may know, Federal payments for university allocated overhead rose from 24 percent of total Federal support for research in 1974 to 31 percent in 1984. I believe this disproportionate growth of Federal payments for university allocated overhead is damaging to our efforts to encourage important scientific research.

Congress itself recognizes the problem of rising overhead payments, and has expressed its concern on a number of occassions. In 1981, the Senate Committee on Appropriations, in reporting the FY 1982 Labor-HHS Appropriations bill, expressed concern over the rising level of Federal overhead payment rates, and predicted that should these rates continue to increase, "the amount of money appropriated by the Congress will finance less and less actual research." In 1983, the House expressed its concern about "the rate at which these (overhead) costs are escalating" and that it was "not convinced that the present system for calculating these costs is equitable. . . ." Both this report and the companion Senate report urged the Administration, in consultation with scientists and administrators, to formulate a governmentwide policy to address the issue of rising overhead payment. Last year, conferees for the 1986 Labor-HHS Appropriations bill directed the Administration to take steps to contain both research costs and overhead costs.

Coupled with this longstanding concern of both the executive branch and the Congress, a number of other groups have addressed the issue or rising payments for overhead. Reforms have been proposed in studies prepared by the General Accounting Office, the National Academy of Sciences, the President's Private Sector Survey on Cost Control, the White House Office of Science and Technology Policy, the Department of Health and Human Services, and the White House Science Council. Several of these reports, as well as audits performed by Federal staff of university allocated overhead claims, documented cases where the Federal government was clearly paying more than its fair share of universities' overhead.

In developing proposed changes to OMB Circular No. A-21, we determined that a 26 percent limit represented the average rate for

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Federal payments to universities for their four allocated administrative overhead pools, with one-half of the major universities exceeding the 26 percent rate. We believe implementation of this rate, followed by a subsequent adjustment to 20 percent, will strengthen efforts to maintain a stable and sustainable program of Federal support for research and development at universities. Especially in light of current budget constraints underscored by the congressionally initiated Gramm-Rudman-Hollings legislation, continuation of the current trend of more for university overhead and less for research is unacceptable. Thus, our primary interest in restoring an appropriate balance between research and overhead is to protect the Nation's research efforts during a period of budgetary restraint.

We welcome alternative approaches to restore an appropriate balance between research and overhead. As noted above, the issue of rising university overhead payments is not new, and we recognize that other alternatives may exist. In seeking the broadest public comment possible, we have sought to ensure that such alternatives would be brought to our attention.

Let me now turn to your concerns regarding the applicability of the Paperwork Reduction Act and Executive Order No. 12291 to proposed changes to OMB Circular No. A-21. The procedural issues you raise are important ones and relate to the ultimate implementation of any changes.

As you know, we have traditionally taken the position that data collection related to OMB Circular No. A-21 occurs only through implementation by agencies. Our position has been that this results from promulgation of instructions, regulations and other implementing guidance by the agencies and that agencies must individually receive Paperwork Reduction Act approval for such collections of information even though they are driven by A-21. In light of the concerns you have raised, we are currently reassessing this interpretation and reviewing all data collection issues related to A-21 and the proposed changes. We hope to conclude this review before any final action on changing A-21 is taken. Regardless of the outcome of the proposed changes to A-21, we intend seriously to deal with these procedural questions relating to the Paperwork Reduction Act as quickly as possible.

You have asked about the relationship between Executive Order No. 12291 and the proposed revisions to A-21. Prior to any final implementation of the proposed or other changes to OMB Circular No. A-21, I assure you that we will conduct a thorough review of the changes, taking into account the President's regulatory principles as contained in Executive Order No. 12291.

The Administration is committed to the importance of discussing OMB Circular No. A-21 revision with the widest possible audience. As you are aware, we have delayed the proposed implementation date of the A-21 revisions in order to fully consult with the university community on how to most effectively curb university allocated overhead. Any final decisions in this area, I assure you, will reflect full consideration of the opinions of the affected public.

Sincerely yours,

JAMES C. MILLER III, *Director.*

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